

## **PURCHASE AND SALE AGREEMENT**

**THIS PURCHASE AND SALE AGREEMENT** is made as of this 12<sup>th</sup> day of May, 2016 (the "Agreement" or "PSA"), by and among Frederick County, Maryland (the "County"), a body politic and corporate and a political subdivision of the State of Maryland, and Aurora Holdings VII, LLC ("Holdings VII"), a Maryland limited liability company, Citizens Care and Rehabilitation Center of Frederick, LLC ("Citizens"), a Maryland limited liability company, and Odyssey Assisted Living at Montevue, LLC ("Odyssey"), a Maryland limited liability company, (Holdings VII, Citizens, and Odyssey collectively as "Aurora"), (the County and Aurora being sometimes referred to herein as the "Parties").

### **W-I-T-N-E-S-S-E-T-H:**

**WHEREAS**, the County owns certain real and personal property which was formerly known as the Citizens Care and Rehabilitation Center, a 170-bed comprehensive care facility (the "CCRC") and the Montevue Assisted Living Facility, a 75 unit assisted living facility ("MALF" and, together with the CCRC, the "Facility"), located at 1910 and 1920 Rosemont Avenue, Frederick, Maryland 21702; and

**WHEREAS**, on June 25, 2013, the Board of County Commissioners of Frederick County adopted Resolution No. 13-15 in which they determined that the Facility and real property associated therewith were no longer required for governmental purposes, and decided to effectuate the transfer of ownership and operation of the Facility and associated real property to a private operator; and

**WHEREAS**, the County agreed to sell and Aurora agreed to purchase, and accept the transfer of, the Facility Assets (as defined herein), pursuant to the terms of an Asset Purchase Agreement dated May 1, 2014 (the "APA"); and

**WHEREAS**, the APA provided that Aurora would initially lease the Facility and receive a transfer of the CCRC Licensed Capacity and the MALF Licensed Capacity pursuant to a "Facility Lease" dated as of May 1, 2014, and upon the satisfaction of certain conditions precedent, Aurora would acquire the Facility Business Assets and the Facility Real Property (as both terms were defined therein), and the County agreed to transfer the Facility Business Assets to Aurora at the "Initial Property Closing" (as defined therein) and transfer the Facility Real Property to Aurora at the "Land Closing" (as defined therein); and

**WHEREAS**, certain private parties brought suit against the County on several grounds disputing the County's authority to complete the transactions contemplated in the APA; and

**WHEREAS**, as a possible means of resolving the pending lawsuits, the County contemplated the condemnation of all of the property interests acquired by Aurora as contract purchaser under the APA, as lessee under the Facility Lease, and under the related documents entered into by the County and Aurora pursuant to Ordinance 15-02-002 (Budget Amendment 001-16), adopted by the County Council on September 19, 2015, and under threat of such condemnation, Aurora has agreed to sell to the County all of its rights and property interests of

whatever nature, except those interests specifically delineated as Excluded Assets, in the Facility, the APA, Facility Business Assets, the Facility Lease, the CCRC Licensed Capacity, the MALF Licensed Capacity, the Facility Real Property, the Aurora Additions, the Facility Assets and all related documents (collectively, the "Aurora Assets") pursuant to this Agreement and a Settlement Agreement dated May 12, 2016 (the "Settlement Agreement").

**NOW, THEREFORE**, in consideration of the mutual premises and obligations set forth herein, the Parties hereto, intending to be legally bound hereby, agree as follows:

## **ARTICLE I**

### **GENERAL**

Section 1.1 **Definitions.** Words and terms that are used herein as defined terms shall (unless otherwise defined herein or unless the context clearly requires otherwise) have the following meanings:

**"Acquisition Price"** means the sum of Seven Million Eight Hundred Fifty Thousand Dollars (\$7,850,000) to be paid by the County for the purchase of the Aurora Assets. The Acquisition Price includes the amount of Five Million Five Hundred Thousand Dollars (\$5,500,000) which shall be paid directly to Aurora at Closing, and the sum of Two Million Three Hundred Fifty Thousand Dollars (\$2,350,000) which shall be paid into escrow for distribution to Aurora pursuant to the Post-Closing Escrow Agreement.

**"Act of Bankruptcy"** means that Aurora (a) shall have commenced a voluntary case under any bankruptcy law, applied for or consented to the appointment of, or the taking of possession by, a receiver, trustee, assignee, custodian or, liquidator of all or a substantial part of its assets; (b) shall have failed, or admitted in writs inability generally, to pay its debts as such debts become due; (c) shall have made a general assignment for the benefit of creditors; (d) shall have been adjudicated a bankrupt, or shall have filed a petition or an answer seeking an arrangement with creditors; (e) shall have taken advantage of any insolvency law, or shall have submitted an answer admitting the material allegations of a petition in bankruptcy or insolvency proceeding; or (f) an order, judgment or decree for relief in respect of Aurora shall have been entered in an involuntary case, without the application, approval or consent of Aurora by any court of competent jurisdiction appointing a receiver, trustee, assignee, custodian or liquidator for Aurora or for a substantial part of any of its assets and such order, judgment or decree shall continue unstayed and in effect for any period of one hundred eighty (180) consecutive days; (g) Aurora shall have filed a voluntary petition in bankruptcy; (h) Aurora shall have failed to remove an involuntary petition in bankruptcy filed against it within one hundred eighty (180) days of the filing thereof; or (i) an order for relief shall have been entered against Aurora under the provisions of the United States Bankruptcy Act, 11 U.S.C.A. § 301.

**"Agreement" or "PSA"** means this Purchase and Sale Agreement, including the Exhibits and Schedules hereto and any written amendments hereof or supplement hereto that may be executed from time to time by the Parties hereto.

**"Amended Indemnity Escrow Agreement"** is the agreement to be executed by the parties on the Closing Date as set forth in Section 2.1(d) in the form attached as Exhibit B for the purpose of replacing and supplanting in its entirety the Indemnity Escrow Agreement executed by the parties on May 1, 2014.

**"APA"** is defined in the Recitals hereto.

**"APA Documents"** means, collectively, the APA, the Facility Lease, the CCCA, and all related documents referenced therein to which the County and Aurora were parties.

**"Applicable Laws"** means the CCRC License, the MALF License and any statute, law, constitution, charter, ordinance, resolution, judgment, order, decree, rule, regulation, directive, interpretation, ordinance, standard or similarly binding authority, which shall be enacted, adopted, promulgated, issued or enforced by a Governmental Body relating to Aurora, the Facility, the Facility Business Assets, the Facility Real Property, and/or the County (to the extent related to the Facility and/or the Facility Business Assets), including, but not limited to, the Permits.

**"Assignment of Contracts"** means the Assignment and Assumption Agreement in the form of Exhibit D to be entered into by the Parties on the Closing Date.

**"Assumed Contracts"** is defined in Section 2.10.

**"Aurora"** is defined in the Recitals hereto.

**"Aurora Additions"** has the meaning set forth in Section 2.2(b)(xvii).

**"Aurora Assets"** has the meaning set forth in the recitals to this Agreement.

**"Aurora Assets Bill of Sale"** means a bill of sale substantially in the form of Exhibit E attached hereto.

**"Buildings and Improvements"** means the buildings, sidewalks, parking lots, landscaping, driveways and all other structures and site improvements located on the Facility Real Property.

**"CCCA"** has the meaning set forth in Section 4.2(h).

**"CCRC"** means the Citizens Care and Rehabilitation Center of Frederick, formerly known as Citizens Care and Rehabilitation Center, a 170-bed comprehensive care facility, located at 1920 Rosemont Avenue, Frederick, Maryland 21702.

**"CCRC License"** means the license issued by the DHMH to Aurora, pursuant to which Aurora operates the CCRC as a 170-bed comprehensive care facility.

**"CCRC Licensed Capacity"** means the number of licensed beds (170) at the CCRC, as evidenced by the CCRC License.

**"Closing Conditions"** means (a) approval by the DHMH and any other Governmental Body of the transfer of the CCRC Licensed Capacity and the MALF Licensed Capacity from Aurora to the County; (b) the approval by the DHMH to issue licenses to the County to operate the CCRC and the MALF; (c) the completion or occurrence of any actions required to be completed by Closing under the terms of the Settlement Agreement; (d) all consents, approvals, orders or authorizations of, or registrations, declarations, or filings with, or notices to, any Governmental Authority or other Person required to be made or obtained in connection with the authorization, execution, delivery, and performance by the Parties of this Agreement and the APA Documents, or the consummation of the transactions contemplated hereby and thereby; (e) evidence that the County obtained Permits listed in Schedule 2.2(b)(ix) and Provider Agreements listed in Section 2.2(b)(xvi) that are not transferrable or assignable by Aurora to the County hereunder; and (f) compliance with the requirements of Sections 2.10, 4.1(b) and 4.1(d) hereof.

**"Closing Date"** means the first day of the month immediately following the satisfaction of the Closing Conditions, but in any case the Closing Date shall not be extended beyond September 1, 2016 without the written consent of Aurora and the County.

**"Contract Date"** means the date of execution of this Agreement by all Parties.

**"County"** means Frederick County, Maryland, a body politic and corporate and a political subdivision of the State of Maryland.

**"DHMH"** means the Maryland Department of Health and Mental Hygiene, or any successor agency to which the powers of the DHMH have been transferred.

**"Environmental Laws"** means all federal, state, county and local laws, rules, ordinances, regulations, governmental, administrative or judicial orders or decrees or other legal requirements of any kind governing pollution or contamination of the environment, occupational health and safety.

**"Escrow Agreement" or "Post-Closing Escrow Agreement"** means the Post-Closing Escrow Agreement in substantially the form of Exhibit C hereto, to be entered into between the County, Aurora and the Escrow Agent on the Closing Date.

**"Escrow Agent"** means Fidelity National Title Insurance Company, Columbia, Maryland for purposes of the Post-Closing Escrow Agreement.

**"Event of Default"** means any event which is specified as such under the terms of Article VI hereof.

**"Excluded Assets"** is defined in Section 2.3.

**"Excluded Liabilities"** is defined in Section 2.13.

**"Facility"** means, collectively, the CCRC and MALF.

**“Facility Assets”** means, collectively, the Facility Business Assets, the CCRC Licensed Capacity, the MALF Licensed Capacity and the Facility Real Property.

**“Facility Business Assets”** means Buildings and Improvements located on the Facility Real Property and comprising the Facility, and all assets used in connection with the operation of the Facility (other than the Facility Real Property, the CCRC Licensed Capacity and the MALF Licensed Capacity), including all of the personal property located within and related to the operation and maintenance of the Facility, including without limitation, (a) all equipment, machinery, fixtures, furniture, supplies, vehicles, computers and software belonging to the County and located within the Facility Real Property, (b) medical and business records (to the extent that transfer of such records is permitted under the provisions of applicable law), (c) all residents’ trust accounts; (d) assignable rights under leases, contracts, accounts and franchises; and (e) such other tangible property as shall be agreed to by the County and Aurora, but not including any Excluded Assets.

**“Facility Lease”** means the existing lease of (i) the Facility Real Property and (ii) the Facility Business Assets from the County to Aurora dated May 1, 2014.

**“Facility Lease Effective Date”** means the date on which the Facility Lease, by its terms, became effective (i.e., May 1, 2014).

**“Facility Real Property”** means the real property located at 1910 and 1920 Rosemont Avenue, Frederick, Maryland 21702, comprised of approximately 7.538 acres and described more particularly on Exhibit A, but excluding the improvements thereto which are included in the Facility Business Assets.

**“GAAP”** means generally accepted accounting principles.

**“Government Payment Programs”** means the federal and state Medicare, Medicaid, and Tricare programs, with a Governmental Body.

**“Governmental Body”** means, as appropriate, anyone or several of: the United States of America, the State, the County, or any court of competent jurisdiction, agency, authority, regulatory body or political subdivision of the United States of America, the State or the County that may have jurisdiction over or power and authority to regulate Aurora, the Facility, the Facility Assets and/or the County (to the extent related to the Facility and/or the Facility Assets).

**“Indemnity Escrow Agreement”** has the meaning given such term in the APA.

**“MALF”** means Odyssey Assisted Living at Montevue, formerly known as the Montevue Assisted Living Facility, a 75 unit assisted living facility, located at 1910 Rosemont Avenue, Frederick, Maryland 21702.

**“MALF License”** means the license issued by the DHMH to Aurora, pursuant to which Aurora operates MALF as a 75 unit assisted living facility.

**"MALF Licensed Capacity"** means the number of licensed units (75) at MALF, as evidenced by the MALF License.

**"Management Agreement"** means the Management Agreement in the form of Exhibit F to be entered into between the County and the Manager on the Closing Date.

**"Manager"** means Aurora Health Management, LLC, in its capacity as manager under the Management Agreement.

**"Material Adverse Change"** means a material adverse change in the business, assets, condition, or operations of the Facility business taken as a whole.

**"Permits"** is defined in Section 2.2(b)(ix) hereto.

**"Permitted Encumbrances"** means any of the following encumbrances to the extent that such encumbrances do not materially impair the ability of County to utilize or finance the Facility Real Property in the manner contemplated by the terms of this Agreement:

(a) minor defects and irregularities in the title to the Facility Real Property that do not materially impair use of the Facility Real Property in the manner contemplated by the terms of this Agreement or render title to the Facility Real Property unmarketable;

(b) easements, exceptions, restrictions or reservations, and rights-of-way for the purpose of pipelines, telephone lines, telegraph lines, power lines and substations, roads, streets, highways, railroad purposes, drainage and sewerage purposes, or canals, laterals, ditches, and other like purposes, or for the joint and common use of the Facility Real Property that do not materially impair the use of such property for the purposes for which it is or may reasonably be expected to be held; provided, however, that the ALTA Policy issued at Closing affirmatively insures against loss or damage arising out of or relating to such items or by reason of any encroachment, overlap, boundary dispute or private easement, and further insures that none of such items interfere with the use of the Facility Real Property as a long term care facility;

(c) rights reserved to or vested in any municipality or governmental or other authority to control or regulate or use in any manner any portion of the Facility Real Property which do not materially impair the use of such property in the manner contemplated by the terms of this Agreement;

(d) any obligations or duties affecting any portion of the Facility Real Property of any municipality or governmental or other public authority with respect to any right, power, franchise, grant, or Permit; and

(e) present or future zoning laws and ordinances; and

(f) any encumbrance affecting the Facility prior to the commencement of the Facility Lease.

**"Person"** means an individual, a sole proprietorship, a partnership, a corporation, an association, an institution, a joint stock company, a limited liability company, a trust, a joint venture, an unincorporated organization or a Governmental Body (or department, agency or political subdivision thereof) or any other legal entity.

**"Post-Closing Escrow Agreement"** means the Post-Closing Escrow Agreement in substantially the form of Exhibit C hereto, to be entered into between the County, Aurora and the Escrow Agent on the Closing Date.

**"Provider Agreement"** means a contract or agreement with, or a provider number issued by, a Government Body that enables a health care provider or supplier to directly or indirectly receive payments pursuant to a Government Payment Program.

**"Settlement Agreement"** has the meaning set forth in the Recitals.

**"State"** means the State of Maryland.

Section 1.2 Interpretation. The terms "herein," "hereunder," "hereby," "hereto," "hereof," and similar terms, refer to this Agreement; the term "heretofore" means before the Contract Date; and the term "hereafter" means after the Contract Date. Unless otherwise noted, the words "include," "includes," and "including," as used in this Agreement, shall be deemed to be followed by the phrase "without limitation." The words "agree," "agreements," "approval," and "consent," as used in this Agreement shall be deemed to be followed by the phrase "which shall not be unreasonably withheld or unduly delayed," except as may otherwise be specified.

Words importing the masculine gender include the feminine gender or the neuter and vice versa, as the case may be. Words importing the singular number include the plural number and vice versa.

Section 1.3 Time of the Essence. All dates and times set forth in this Agreement are "OF THE ESSENCE", the specified time and dates in this Agreement shall be performed on or before such time as set forth in this Agreement.

## **ARTICLE II**

### **PURCHASE AND SALE; CLOSING**

#### **Section 2.1 Purchase and Sale; Closing.**

(a) The County agrees to purchase, and Aurora agrees to sell, all of Aurora's interest of whatever nature in the Aurora Assets as defined in the Recitals for the Acquisition Price, upon the terms and conditions set forth herein. Closing shall occur on the Closing Date, as defined in Section 1.1.

(b) [INTENTIONALLY DELETED]

(c) On the Closing Date, the County shall pay (i) to Aurora a portion of the Acquisition Price in the amount of Five Million Five Hundred Thousand Dollars (\$5,500,000) by wire transfer of immediately available funds as directed by Aurora, and (ii) to the Escrow Agent the balance of the Acquisition Price in the amount of Two Million Three Hundred and Fifty Thousand Dollars (\$2,350,000) to be held by the Escrow Agent and disbursed pursuant to the terms of the Post-Closing Escrow Agreement.

(d) On the Closing Date, the parties shall:

(i) execute and deliver the Post-Closing Escrow Agreement, the Amended Indemnity Escrow Agreement, the Assignment of Contracts, and the Facility Business Assets Bill of Sale;

(ii) execute and deliver estoppel certificates regarding compliance with all representations, warranties and agreement under this Agreement;

(iii) execute all other documents required under this Agreement and/or required to consummate the transactions contemplated herein; and

(iv) execute and deliver all documents described in the Settlement Agreement to be executed at Closing.

(e) On the Closing Date, the County shall assume the ownership and operation of the Facility as its licensed operator with the Manager serving as manager pursuant to the Management Agreement. On the Closing Date, the County shall assume all obligations arising on and after the Closing Date under the "Assumed Contracts" which shall be assigned by Aurora in accordance with the Assignment of Contracts in the form attached, the County shall acquire Aurora's interest in any Aurora Assets pursuant to a Bill of Sale in the form attached as Exhibit E.

(f) As of the Closing Date, expenses of a recurring nature that are incurred in connection with the Facility in the ordinary course of business which are the responsibility of Aurora, as tenant under the Facility Lease, including those set forth below, shall be prorated in accordance with generally accepted accounting principles, so that all such expenses for periods prior to the Closing Date shall be for the account of Aurora, and all such expenses for periods on and after the Closing Date shall be for the account of the County and any such adjustments shall be added or deducted from the cash portion of the Acquisition Price payable at Closing.

(i) Charges for utilities, including electricity, gas, cable, garbage collection and telephone and current water, sewer, storm water, drainage and other fees or assessments levied by any Governmental Body, if any, for the Facility Assets shall be apportioned between Aurora (on the one hand) and the County (on the other hand) as of the Closing Date.

(ii) All amounts prepaid or payable under the leases, contracts, accounts and franchises being transferred hereunder (not including payments under the

CCCA, which shall be addressed as provided in Section 4.2(h)) shall be apportioned as of the Closing Date. Aurora shall prepare and deliver to the County, prior to the Closing Date, a written statement which shall set forth all prepayments of private pay or other patient revenues on account of services to be rendered or supplied on or after the Closing Date that were received by Aurora prior to the Closing Date.

(iii) Any and all real property taxes and all real property assessments accruing before and after the Closing Date shall be the sole responsibility of the County (such County obligation for periods prior to the Closing Date being agreed in the Facility Lease).

(iv) Except as provided in the APA Documents, any and all personal property taxes with respect to the Aurora Assets accruing prior to the Closing Date shall be the responsibility of Aurora. Any and all personal property taxes with respect to the Aurora Assets accruing on and after the Closing Date shall be the responsibility of the County.

(v) The Parties understand that Maryland sales and use tax may apply to a portion of the Acquisition Price allocable to assets subject to such taxes and that it is County's responsibility to pay any and all such taxes.

(vi) In the event that any of such items cannot be determined at or prior to the Closing Date the parties agree to adjust such items as soon as determinable after the Closing, not later than ninety (90) days after Closing, which obligation shall survive the Closing.

## Section 2.2 Description of Facility Real Property and Assets.

(a) Facility Real Property. The Facility Real Property is the property more particularly described on Exhibit A attached hereto. At the Closing, Aurora shall pay off, release or otherwise extinguish all liens or encumbrances created by Aurora and affecting the Facility Real Property, other than the Permitted Encumbrances.

(b) Facility Business Assets. The Facility Business Assets include those assets described in the definition set forth in Section 1.1 and the assets listed below, including without limitation, those assets in which Aurora had acquired an interest under the APA Documents, the Aurora Additions and any other personal property located at the Facility as of the execution of this Agreement, but excluding the Excluded Assets:

(i) Licensed Skilled Nursing Care Beds. All right, title and interest to One Hundred Seventy (170) licensed skilled nursing beds comprising the CCRC Licensed Capacity under the CCRC License.

(ii) Licensed Assisted Living Units. All right, title and interest to Seventy-Five (75) licensed assisted living units comprising the MALF Licensed Capacity under the MALF License.

(iii) Fixtures and Improvements. All of Aurora's right, title and interest in and to all buildings, works, structures, fixtures, construction in progress, improvements, betterments, installations, and additions constructed, erected, or located on or attached or affixed to the Facility Real Property, other than "Aurora Additions".

(iv) Vehicles. All certificated vehicles (collectively the "Vehicles") listed on Schedule 2.2(b)(iv).

(v) Furniture and Equipment. All beds, furniture, medical and nursing equipment, materials, appliances, spare parts, supplies, and other tangible personal property of every kind, character, and description located on, and used at or primarily in connection with, the Facility and/or the Facility Real Property as of the Closing, including without limitation the assets and properties listed on Schedule 2.2(b)(v).

(vi) Inventories. All inventory, which shall be maintained at levels consistent with past practice through and including the Closing Date, (including food, supplies and disposable goods) on hand on the Closing Date, to the extent such items are assignable or transferable by Aurora.

(vii) Computers. To the extent assignment is permitted by any third party, all of the County's computer equipment and hardware present at the Facility on the commencement of the Facility Lease, including without limitation all central processing units, terminals, disk drives, tape drives, electronic memory units, printers, keyboards, screens, tablets, peripherals (and other input/output devices), modems and other communication controllers, and any and all parts and appurtenances thereto, located on, and used at or primarily in connection with the Business and/or the Real Property, as of the Closing, and specifically including without limitation the computer equipment and hardware listed on Schedule 2.2(b)(vii).

(viii) Intellectual Property. To the extent assignment is permitted by any third party owner, all intellectual property relating to, or used in connection with the operation of, the Facility and/or the Facility Real Property listed on Schedule 2.2(b)(viii), and all rights to recover for infringement thereon.

(ix) Permits. To the extent assignable, or transferrable pursuant to Applicable Laws, all right, title, and interest of Aurora in, to, and under all permits and licenses (the "Permits") relating to, or used in connection with the operation of, the Facility and the Facility Real Property, or relating to the use, operation or enjoyment of the Facility, the Facility Real Property, the Aurora Additions or the Facility Business Assets, including without limitation the Permits listed on Schedule 2.2(b)(ix).

(x) Personal Property Leases. To the extent assignable, all right, title, and interest of Aurora in, to, and under the personal property leases (the "Leases") listed on Schedule 2.2(b)(x), and all rights (including rights of refund and offset), privileges, deposits, claims, causes of action, and options in favor of Aurora relating or pertaining to the Leases or any thereof.

(xi) Contracts. All right, title, and interest of Aurora in, to and under the contracts and agreements listed on Schedule 2.2(b)(xi), and all rights (including rights of refund and offset), privileges, deposits, claims, causes of action, and options in favor of Aurora relating or pertaining to such contracts and agreements or any thereof (collectively, the "Contracts").

(xii) Books and Records. Copies of all books, records of the Facility and Aurora used primarily in connection with the operation of the Facility and that are necessary for the County's operation of the Facility after the Closing Date, including without limitation all accounting records and all books and records relating to employees, including their accrued benefits, the purchase of materials, supplies, and services, and dealings with customers, vendors, and suppliers of the Facility, and including, to the extent assignment is permitted by any third party owner thereof, computerized books and records and other computerized storage media and the software used in connection therewith.

(xiii) Patient and Supplier Data. For the period covered by the Facility Lease, all patient lists and patient data, vendor lists and vendor data, supplier lists and supplier data, and sales and promotional material and other sales related material relating to, or used in connection with the operation of, the Facility.

(xiv) Deposits. All right, title, and interest of Aurora in and to all of the resident security deposits (collectively, the "Deposits").

(xv) Warranty Claims. All warranties and all rights, claims, and causes of action of Aurora under or pursuant to all warranties, representations, indemnifications, hold harmless provisions, and guarantees made by suppliers, licensors, manufacturers, contractors, and others in respect of the Facility or the Facility Assets.

(xvi) Provider Agreements. To the extent assignable or transferrable pursuant to Applicable Laws, all right, title, and interest of Aurora in, to, and under all Provider Agreements applicable to the Facility including, without limitation, the Provider Agreements listed on Schedule 2.2(b)(xvi).

(xvii) Aurora Additions. All items of equipment, fixtures, furniture or other betterments at the Facility which were purchased by Aurora and which were not replacements for similar items which were included in "Landlord Personal Property" (as defined in the Facility Lease) and present in the Facility, as listed on Schedule 2.2(b)(xvii).

Section 2.3 Excluded Assets. Notwithstanding any statement or provision contained in this Agreement to the contrary, the following Facility Assets which are associated with Aurora's operation of the Facility are not intended by the parties to be a part of the Aurora Assets that are being purchased hereunder and are hereby expressly excluded from such purchase and the definition of the terms "Facility Assets" or "Facility Business Assets" (collectively, the "Excluded Assets"):

(a) cash and cash equivalents as of the Closing Date, including investments in marketable securities, certificates of deposit, bank accounts, temporary investments, and the prepaid expenses and deposits (excluding resident security deposits referenced in Section 2.2(b)(xiv)) listed on Schedule 2.3(a), List of Cash and Cash Equivalents;

(b) all of Aurora's accounts receivable generated by CCRC and MALF prior to the Closing Date, including Aurora's right to payments and reimbursements from private payors, Medicare, Medicaid (including pay for performance bonuses), or any other health care reimbursement of payment intermediary arising from services provided prior to the Closing Date;

(c) all other current assets of Aurora of the type historically included in Aurora's calculation of its net working capital or shown on its balance sheets;

(d) all claims, rights, interests and proceeds (whether received in cash or by credit to amounts otherwise due to a third party) with respect to amounts overpaid by Aurora to any third party with respect to periods prior to the Closing Date, and rights to settlements and retroactive adjustments, if any, whether arising under a cost report of Aurora or otherwise, for cost reporting periods ending at or prior to the Closing Date, whether open or closed, arising out of or relating to Aurora's arrangements with any payor;

(e) all inventory, prepaid expenses and other Assets disposed of, expended or exhausted prior to the Closing Date in the ordinary course of business and items of equipment and other Facility Business Assets transferred or disposed of prior to the Closing Date in a manner permitted in this Agreement;

(f) all records or other materials that Aurora is required by law to retain in its possession and all records related to the Excluded Assets or the Excluded Liabilities, as well as charter documents, minute books, stock ledgers, tax identification numbers, books of account and other constituent records relating to the organization of the Facility;

(g) except for the books and records that constitute Facility Business Assets under Section 2.2(b)(xii), above, Aurora's employee or operation manuals, third party reimbursement systems and manuals, policies and procedures, and all information that does not pertain to the continuing operations of the Facility;

(h) rights of recovery, rights of setoff, claims, defenses, demands and causes of action of any nature available to or being pursued by Aurora at the Facility Lease Effective Date, that arise out of the operations of the Facility or the Facility Business Assets prior to the Closing Date, whether or not accrued and whether or not disclosed, and all rights and defenses in respect of indebtedness and other obligations not assumed by the County hereunder;

(i) rights to tax refunds (only with respect to any taxes paid by Aurora) or claims under or proceeds of insurance policies related to the Facility or the Facility Assets resulting from periods prior to the Closing Date, and the right to pursue appeals of the same;

(j) the intellectual property not used at the Facility;

(k) other than as specified in Section 2.2(b)(viii), all trade names, trademarks and service marks (or variations thereof), copyrights, symbols, logos, domain names, email addresses and any other business names that are proprietary to Aurora, all goodwill associated therewith, and all applications and registrations associated therewith, together with any promotional material, stationary, supplies or other items of inventory bearing such names or symbols or abbreviations or variations thereof excluding Citizen's Care and Rehabilitation Center and Montevue Assisted Living;

(l) other than as specified in Section 2.2(b)(vii), all software installed on personal computers or servers owned by Aurora and located at the Facility, together with all computer or software manuals, procedures and other materials relating thereto;

(m) reserves or prepaid expenses related to the Excluded Assets and the Excluded Liabilities;

(n) all employee benefit plans and funds and accounts of all employee retirement, deferred compensation, health, welfare or benefit plans and programs, and any contracts or agreements related thereto, and any Facility Asset that would revert to the employer upon the termination of any employee benefit plan, including assets representing a surplus or overfunding of any employee benefit plan;

(o) all writings and other items protected from discovery by the attorney-client privilege, the attorney work product doctrine or any other cognizable privilege or protection;

(p) the electronic funds transfer accounts of the Facility into which payments are made on account of patient accounts receivable and all information necessary to access such accounts; and

(q) accrued payroll and taxes relating thereto;

(r) rights and obligations that accrue to Aurora under all of Aurora's contracts and agreements that are not included in the Assumed Contracts and under this Agreement;

(s) all Permits relating to, or used in connection with the operation of, the Facility and the Facility Real Property, or relating to the use, operation or enjoyment of the Facility Business Assets that Aurora is prohibited by Applicable Laws from transferring or assigning to the County;

(t) all Provider Agreements applicable to the Facility that Aurora is prohibited by Applicable Laws from transferring or assigning to the County, and the Medicaid provider agreement.

Section 2.4 Allocation of Acquisition Price. Aurora and the County agree to allocate the Acquisition Price in accordance with the allocation set forth on Schedule 2.4, to be bound by such allocation, to account for and report the purchase and sale of Aurora Assets

contemplated hereby for federal and state tax purposes in accordance with such allocations, and not to take any position (whether in tax returns, tax audits, or other tax proceedings), that is inconsistent with such allocations without the prior written consent of the other Party. In this regard, the Parties agree that, to the extent required, they will each properly prepare and timely file form 8594 in accordance with Section 1060 of the Internal Revenue Code, as amended (the "Code"). The Parties agree Schedule 2.4 sets forth the net increase in value of the listed assets over the Acquisition Price of the APA.

Section 2.5      Representations of Aurora.

(a) With respect to the Facility Real Property, Aurora represents to the County, as follows:

(i) Except as otherwise disclosed to the County, there are no agreements, written or oral, created by Aurora affecting the occupancy or possession of the Facility Real Property, or title thereto.

(b) With respect to the Facility Business Assets, Aurora represents to the County, as follows:

(i) Aurora shall convey to the County at the Closing all of its right, title, and interest in and to the Facility Business Assets by the Facility Business Assets Bill of Sale and other appropriate documents reasonably satisfactory to the County, free and clear of any claim, suit, proceeding, restriction, limitation, security interest, pledge, lien or encumbrance of any kind or nature created by or through Aurora, except as otherwise provided herein.

(c) Except as may otherwise be set forth in this Agreement, the County acknowledges and agrees that neither Aurora nor any agent or representatives of Aurora have made, and Aurora is not liable or responsible for or bound in any manner by any express or implied representations, warranties, covenants, agreements, obligations, guarantees, statements, information or inducements pertaining to the Condition of the Facility Assets or any part thereof. The County acknowledges, agrees, represents and warrants that it has had, and/or shall have had, the opportunity and has in fact, and/or shall have in fact, inspected the Facility Assets and all matters respecting the Facility Assets and is and/or shall be fully cognizant of the Condition of the Facility Assets and that it has had, and/or shall have had, access to information and data relating to all of same as the County has considered necessary, prudent, appropriate or desirable for the purposes of this transaction and that the County and its agents and representatives have, and/or shall have had, independently inspected, examined, analyzed and appraised all of same. The County acknowledges that the County is and/or will be fully familiar with the Facility Assets and the County agrees to accept the Facility Assets "AS IS", with all faults, in its current condition, subject to reasonable wear and tear. The County shall be responsible at its sole cost and expense to obtain and satisfy all required governmental or regulatory inspection, certificate or other such transfer requirements prior to Closing. As used herein, "Condition of the Facility Assets" shall mean the title and physical condition thereof, including all environmental matters, the quantity, character, fitness and quality thereof, merchantability, fitness for particular purpose,

the income, expenses or operation thereof, the value and profitability thereof, the uses which can be made thereof, title to the Facility Assets the structural and mechanical condition of the Facility Assets, the buildings, structures and improvements situate thereon, the plumbing, heating, electric and ventilating systems (if any) serving the Facility Assets and any other matter or thing whatsoever with respect thereto. In addition to, and without limiting the foregoing, the County further acknowledges and agrees that Aurora's interest in and to the Facility Assets are conveyed in their "as is" condition with respect to environmental matters, and the County hereby assumes the risk that adverse past, present or future conditions may not be revealed in its inspection or investigation.

Section 2.6 Closing. The Closing shall take place either by mutually acceptable escrow closing arrangements with the Escrow Agent, or at the offices of Gallagher Evelius & Jones LLP, 218 North Charles Street, Suite 400, Baltimore, Maryland 21201, or at such other location as the Parties may mutually agree upon.

Section 2.7 Closing Conditions.

(a) At all times prior to the occurrence of the Closing, the County shall use diligent, good faith efforts to cause the satisfaction of all Closing Conditions, at its sole cost and expense.

(b) The Parties understand and acknowledge that consummation of the transactions contemplated herein requires the DHMH to approve the issuing of a new CCRC License and new MALF License to the County. The County shall obtain those Permits listed in Schedule 2.2(b)(ix) and Provider Agreements listed in Schedule 2.2(b)(xvi) that Aurora is prohibited by Applicable Law from assigning or transferring to the County, which include, but may not be limited to, the CCRC License, MALF License, and a Provider Agreement with the Maryland Medical Assistance Program. The County shall be responsible for submitting applications for such Permits and Provider Agreements, and provide copies of such submissions to Aurora simultaneously upon submission to the respective Governmental Body. Aurora shall cooperate with the County in promptly providing information that is reasonably required by the County in connection with the submission to, and review and/or approval by the Governmental Body of the County's applications for such Permits and Provider Agreements. Any information that has been filed with a Governmental Body (except any information that has been identified in such filing as proprietary or confidential and has been accorded protected or confidential status by such Governmental Body) or otherwise has been made available to the public shall not, under any circumstances, constitute confidential or proprietary information. The County shall also be responsible for obtaining any required waiver from the requirement of a certificate of need, to the extent applicable to the transactions described herein. With respect to its status as a participating provider for the Maryland Medical Assistance Program, Aurora acknowledges its obligation pursuant to COMAR 10.09.10.15-1.D(1)(a) to (i) notify the applicable Governmental Authority of the anticipated change in ownership; and (ii) post an indemnity bond or a standby letter of credit, or provide assurance satisfactory to such Governmental Authority that the County shall assume and be responsible for all financial obligations of Aurora.

(c) Aurora shall comply with the requirements of DHMH under the provisions of COMAR 10.09.10.15-1(D), including, without limitation, causing a bond, letter of credit or other assurance satisfactory to DHMH to be issued in favor of DHMH in the amount required under, and to be otherwise held in accordance with, COMAR 10.09.10.15-1(D)(2).

Section 2.8 Brokerage. Each Party warrants and represents to the other that it has not dealt with any broker, agent or other party who might be deemed to be entitled to a commission or finder's fee in connection with the transactions contemplated under this Agreement. Aurora will indemnify, defend and hold harmless the County from and against any claim for a commission or finder's fee made by any other party by, through or under Aurora, and subject to the provisions of Section 6.9(a) hereof, the County will indemnify, defend and hold harmless Aurora from and against any claim for a commission or finder's fee made by any party by, through or under the County. This Article shall survive the Closing or other termination of this Agreement.

Section 2.9 [Intentionally omitted]

Section 2.10 Contracts. Sixty (60) days prior to the Closing Date, the County shall provide written notice to Aurora of all of contracts described in Section 2.2(b)(xi) which the County desires to accept (the "Assumed Contracts"). All of such contracts which the County does not notify Aurora, as set forth above, shall be terminated pursuant to each contract's term at or prior to the Closing Date.

Section 2.11 Rights and Obligations of County and Aurora. The rights and obligations of the Parties shall be only as expressly stated herein and shall not be expanded, modified, extended or in any way changed by any subsequent change in circumstances or federal, state, county or local, statutory or common law, except as expressly provided for herein.

Section 2.12 Assumed Liabilities. As of the Closing Date, the County agrees to assume the future payment and performance of only the following liabilities in respect of the Facility (collectively, the "Assumed Liabilities"): (a) the obligations under the Assumed Contracts solely to the extent arising out of periods on and after the Closing Date; (b) all obligations of the County under this Agreement and under the Facility Lease, arising during the term thereof; and (c) any violation of the Worker Adjustment and Retraining Notification Act (together with similar state laws, the "WARN Act") with respect to operation of the Facility as a result of the consummation of the transactions contemplated by this Agreement (provided that Aurora has, with respect to the operation of the Facility, complied with the WARN Act prior to the Closing Date). From and after the Closing Date, the County will be responsible for the payment of benefits of the employees who continue to work at the Facility after the Closing Date. Aurora shall provide the County with a detailed accounting of all accrued benefits existing as of the Closing Date, including those benefits not yet due and payable to its employees, and shall provide such other information as the County deems necessary to allow it to fulfill its obligations under this Agreement and the Management Agreement;

Section 2.13 Excluded Liabilities. Except solely for the Assumed Liabilities, all of Aurora's liabilities and obligations, including all liabilities arising out of or relating to the

Facility operations other than the Assumed Liabilities, shall remain the sole responsibility of, and shall be satisfied by, Aurora, including the following: (a) any liability or obligation of Aurora arising out of or relating in any manner to the conduct or operation of the Facility during the term of the Facility Lease, including any overpayments made by Government Payment Programs for services rendered at the Facility during the term of the Facility Lease; (b) any obligation of Aurora, as tenant, under the Facility Lease, during the term thereof; or (c) any obligations or liabilities with respect to any Excluded Assets (all of the foregoing, collectively, the "Excluded Liabilities"). Aurora agrees to indemnify, defend and hold the County harmless from any costs, liabilities or expenses relating to the Excluded Liabilities.

Section 2.14 Conditions to Obligations of All Parties. In addition to the Closing Conditions, the obligations of each of Aurora and the County under this Agreement to cause the transactions contemplated by this Agreement to be consummated are, at its option, subject to the satisfaction of the following conditions:

(a) Governmental Approvals. Aurora and County shall have received all approvals of the applicable Governmental Bodies and the applicable Governmental Bodies shall have taken all actions required to permit the consummation of the transactions contemplated by this Agreement.

(b) No Injunctions. There shall not be in force any order or decree restraining or enjoining consummation of the transactions contemplated by this Agreement or placing any limitation upon such consummation or to invalidate, suspend or require modification of any provision of this Agreement.

(c) Environmental Matters. From the date of the Contract Date until the Closing Date, there shall not have been any change in any material respects in the environmental condition of the Property, it being understood that unless the County notifies Aurora to the contrary prior to thirty (30) days after the Contract Date, the County shall be deemed to have accepted the condition of the Facility as to environmental matters as of such date.

(d) Compliance. The Facility shall be in substantial compliance with all Applicable Laws.

Section 2.15 Accounts Receivable. Aurora shall continue to own, collect and retain all accounts receivable (including pay for performance bonuses) generated from services provided at the Facility prior to the Closing Date. All accounts receivable generated from services provided at the Facility on and after the Closing Date shall belong to the County, and shall be collected and deposited as provided in the Management Agreement so long as it remains in effect.

### **ARTICLE III**

#### **ENVIRONMENTAL CONDITIONS; DUE DILIGENCE; INSPECTIONS**

Section 3.1 Due Diligence. The County hereby confirms that the County has conducted, or shall conduct, any and all inspections of the Aurora Assets, and of the Facility and the Facility Real Property (which, for purposes of this Article III, shall be called the "Premises"), and shall complete any due diligence in connection therewith, including, without limitation, title, flood, tidelands and zoning investigation, structural investigation, soil tests, surveys, engineering studies, geo-technical studies, environmental studies and investigations and physical inspections of the Premises (the "Investigations"), within thirty (30) days after the execution of this Agreement.

### **ARTICLE IV**

#### **REPRESENTATIONS AND COVENANTS**

Section 4.1 Representations and Covenants of Aurora. Aurora hereby represents and warrants to the County as follows:

(a) Aurora is a limited liability company organized and existing under, and governed by, the laws of the State of Maryland, and it is duly qualified to transact business in each and every jurisdiction where such qualification is required to enable Aurora to perform its obligations under the terms of this Agreement. No Act of Bankruptcy has been commenced by or against Aurora, nor, to the best of Aurora's knowledge, is there any legitimate basis therefor. The execution of this Agreement, and the performance of all obligations under this Agreement, have been authorized by all required action of Aurora, all as required by the charter, operating agreement and Applicable Laws that regulate the conduct of Aurora's affairs. The execution of this Agreement and the performance of all obligations set forth herein do not conflict with and do not constitute a breach of or event of default under any charter or operating agreement of Aurora, or any agreement, indenture, mortgage, contract or instrument to which Aurora is a party or by which Aurora is bound so that, upon execution hereof and upon satisfaction of the conditions herein contained, this Agreement constitutes the valid, legally binding obligations of Aurora, enforceable against Aurora in accordance with its terms, except to the extent that enforcement thereof is limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws relating to or limiting creditors' rights generally and the application of the general principles of equity.

(b) Aurora represents that it possesses or will possess at the Closing Date all Permits required under Applicable Laws to undertake and carry out its obligations under this Agreement and under the Management Agreement.

(c) Schedule 4.1(c) attached hereto sets forth a complete and correct list, as of a date no earlier than 30 days prior to the Contract Date, of all deposits and patient trust funds (itemized by individual) held, maintained or administered by or on behalf of the Facility as of

such date. To the best of Aurora's knowledge, any and all deposits and patient trust funds held, maintained or administered by or on behalf of the Facility have been, for the past three years, and presently are, held, maintained or administered in compliance with all applicable laws, rules and regulations.

(d) During the period commencing on the Contract Date through and including the Closing Date, Aurora shall continue to operate the Facility in a manner consistent with its historical operation.

(e) Aurora represents and warrants that Schedule 2.2(b)(xvi) attached hereto sets forth a complete and correct list, as of the Contract Date, of all Provider Agreements with respect to the Facility. Aurora represents and warrants that it is in material compliance with the conditions of participation for Medicare and Medicaid. Aurora represents and warrants that it has not received any notice of any action pending or recommended by any Governmental Body to revoke, limit, withdraw, or suspend any Provider Agreement.

(f) Except as disclosed in Schedule 4.1(f), to the best of Aurora's knowledge, there is no action, suit or proceeding, at law or in equity, pending before or by any court or Governmental Body against Aurora, where in an unfavorable decision, ruling or finding would materially adversely affect the performance by Aurora of its obligations hereunder or the other transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Agreement, or any other agreement or instrument entered into by Aurora in connection with the transactions contemplated hereby.

Section 4.2 Representations and Covenants of the County. The County represents and warrants to Aurora as follows:

(a) The County is duly qualified and has the power, authority, and legal right, to enter into and perform its obligations set forth in this Agreement.

(b) The execution, delivery, and performance of this Agreement (i) has been duly authorized by the County, (ii) does not require any consent, approval or referendum of voters, and (iii) will not violate any Applicable Laws applicable to the County or any provisions of the County's resolutions.

(c) The County has the ability to obtain funds in cash in amounts equal to the Acquisition Price and will at Closing have immediately available funds in cash which will be sufficient to pay the portion of the Acquisition Price and to pay any other amounts payable pursuant to this Agreement and to consummate the transactions contemplated by this Agreement.

(d) The execution of this Agreement, and the performance of all obligations set forth herein do not conflict with, and will not, nor with the passage of time or the giving of notice, constitute a breach of or event of default under any charter, ordinances or resolutions of the County or any agreement, indenture, mortgage, trust, contract or instrument of Applicable Laws to which the County is a party or by which the County is bound. This Agreement has been duly executed and delivered and constitutes a legal, valid and binding obligation of the County,

enforceable in accordance with its terms, except to the extent that the enforcement thereof is limited by any applicable bankruptcy, insolvency, reorganization, moratorium or other laws relating to or limiting creditors' rights generally and the application of general principles of equity.

(e) Upon the termination of the Management Agreement, the County's subsequent manager shall extend offers of employment to Aurora's employees at CCRC and MALF (other than the Administrator and Business Office Manager, whom Aurora may elect to retain and re-assign to another facility). Employees, who accept employment offers from the County's subsequent manager, shall be referred to as "Transferred Employees". The County's subsequent manager shall not assume responsibility for any Transferred Employee until such employee commences employment with the County's subsequent manager. Nothing in this Section 4.2(e) shall, however, create any third party beneficiary or other rights in favor of any Person not a party hereto, including employees of Aurora, or constitute a continued employment agreement for any specific term or condition of employment for any employee of Aurora who may become a Transferred Employee.

(f) Except as disclosed in Schedule 4.2(f), there is no action, suit or proceeding, at law or in equity, pending before or by any court or Governmental Body against the County, where in an unfavorable decision, ruling or finding would materially adversely affect the performance by the County of its obligations hereunder or the other transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Agreement, or any other agreement or instrument entered into by the County in connection with the transactions contemplated hereby.

(g) Post-Closing Reconciliations. The County shall have the authority to use Aurora's Medicare provider number and shall permit the payment of said claims to the County for services and goods provided on and after the Closing Date from Medicare. Such funds for services rendered after Closing shall be the sole property of the County. The County shall provide to Aurora upon receipt of such funds copies of Explanation of Benefits, Remittance Advice forms, and other documents that specify the amount of benefits being paid to the Facility. The County shall promptly remit to Aurora payments relating to periods prior to Closing within five (5) business days of receipt. Aurora shall file or cause to be filed a final Medicaid cost report to the DHMH and a final Medicare cost report to CMS within five (5) months of Closing or upon the due date established by regulation, whichever is sooner.

Section 4.3 Survival. The foregoing representations and warranties by Aurora and the County are true and complete as of the Contract Date and shall be true and complete on the Closing Date.

## **ARTICLE V**

### **CASUALTY AND CONDEMNATION**

Section 5.1 Casualty or Condemnation. No casualty, damage or destruction of all or part of the Facility, and no condemnation of any portion of the Facility shall excuse or relieve any party of its obligations hereunder.

## **ARTICLE VI**

### **BREACHES AND DEFAULTS**

Section 6.1 Breach of Obligations, Representations or Warranties by Aurora. If at any time subsequent to the Contract Date and prior to the Closing Date, (a) Aurora shall breach any obligation, covenant or warranty made by it herein, or (b) any representation made by Aurora herein shall be (or prove to be) false in any material respect, then, upon the County's providing written notice thereof to Aurora, Aurora shall proceed with due diligence and dispatch to take all such actions as shall reasonably be required to cure such breach, and Aurora shall continue to take all such action until such breach is cured.

Section 6.2 Events of Default by Aurora. Subject to the provisions of Section 6.1 hereof, any one or more of the following shall constitute an Event of Default by Aurora hereunder:

(a) Failure by Aurora (within sixty (60) days of either the occurrence or notice of any event described in Section 6.1 above, whichever is later), to cure such breach; or

(b) Any Act of Bankruptcy on the part of Aurora has occurred prior to satisfaction of the terms and conditions of this Agreement; or

(c) Failure by Aurora to consummate the transactions contemplated in this Agreement.

Section 6.3 Remedies of the County. The remedy for the occurrence of an Event of Default set forth under Section 6.2 hereof shall be a suit seeking specific performance by Aurora of the provisions of this Agreement. All rights and remedies under this Agreement are cumulative of and not exclusive of, any rights or remedies otherwise available hereunder, and the exercise of any such rights or remedies shall not bar the exercise of any other rights or remedies.

Section 6.4 Breach of Obligations, Representations or Warranties by the County. In the event (a) that the County shall breach any material obligation herein, or any covenant or warranty made by it herein, or (b) any representation made by the County herein shall be or prove to be false in any material respect then, upon Aurora's providing written notice thereof to the County, the County shall proceed with due diligence and dispatch to take all such actions as shall reasonably be required to cure such breach and the County shall continue to take all such actions until such breach is cured.

Section 6.5 Events of Default by County. Subject to the provisions of Section 6.4 hereof, any one or more of the following shall constitute an Event of Default by County hereunder:

(a) Failure by County (within sixty (60) days of either the occurrence or notice of any event described in Section 6.4 above, whichever is later), to cure such breach; or

(b) Any Act of Bankruptcy on the part of County has occurred prior to satisfaction of the terms and conditions of this Agreement; or

(c) Failure by County to consummate the transactions contemplated in this Agreement.

Section 6.6 Remedies of Aurora for Event of Default by County. The remedy for the occurrence of an Event of Default set forth under Section 6.5 hereof shall be a suit seeking specific performance by the County of the provisions of this Agreement. In addition, Aurora shall have the right to rescind and terminate this Agreement and enforce its rights under the APA Documents. All rights and remedies under this Agreement are cumulative of and not exclusive of, any rights or remedies otherwise available hereunder, and the exercise of any such rights or remedies shall not bar the exercise of any other rights or remedies.

Section 6.7 Non-waiver. No delay or omission to exercise any right or power accruing upon the occurrence of any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient by the nonbreaching party in its sole discretion. No waiver of the occurrence of any Event of Default hereunder, whether by Aurora or the County, shall extend to or shall affect any subsequent Event of Default or shall impair any rights or remedies consequent thereto.

Section 6.8 Pendent Disputes. Notwithstanding anything contained in this Agreement to the contrary, if there shall be a dispute concerning the right of a party to terminate this Agreement, the Parties shall continue to perform their respective obligations hereunder as if the Agreement were in effect until such dispute is resolved and any appeals permitted thereunder are exhausted.

Section 6.9 Indemnification.

(a) Indemnification by Aurora. Subject to the occurrence of Closing hereunder, Aurora agrees to protect, indemnify, defend and hold the County, and its officers, members, employees, and agents, successors and assigns, free and harmless from and against any and all claims, debts, liabilities, obligations, losses, fines, penalties, judgments, assessments, damages, costs and expenses (including but not limited to reasonable attorneys' fees and expenses), liens and encumbrances accruing, based upon, resulting from or directly arising out of (i) any breach or violation of any representation, warranty, covenant, stipulation, agreement or certification by Aurora set forth in this Agreement or in any document delivered hereunder; or (ii) the breach by Aurora of any other term or provision of this Agreement; or (iii) any damage to the Facility

Assets caused by the gross negligence or intentional acts of Aurora, its agents, employees, officers or directors, on or after May 1, 2014, and prior to the Closing Date; or (iv) any obligation of Aurora as tenant under the Facility Lease, (v) any Medicare claims concerning facts or events occurring prior to the Closing Date and connected with the operations of the Facility on or after May 1, 2014; or (vi) any deficiencies in Patient Trust Funds relating to the operation of the Facility on or after May 1, 2014, and prior to the Closing Date; provided, however, the indemnity shall not apply to any liability arising from a breach of this Agreement by the County, or other act or omission by the County occurring on or before the Closing Date. Aurora shall not be liable to the County, under any theory whatsoever, for special, consequential, indirect or incidental damages of any nature, irrespective of whether any party had notice of the possibility of such damages and irrespective of whether resulting from negligence.

(b) Indemnification by County. Subject to the occurrence of Closing hereunder, to the extent permitted by law, and subject to the limitations set forth in subsection (c) below, the County, agrees to protect, indemnify, defend, and hold Aurora and its members, officers, trustees, affiliates, agents, legal representatives, successor and assigns, and each of them, free and harmless from and against any and all claims, debts, liabilities, obligations, losses, damages, fines, penalties, judgments, assessments, damages, costs and expenses (including but not limited to reasonable attorneys' fees and expenses), liens and encumbrances accruing based upon, resulting from or directly or indirectly arising out of (i) any breach or violation of any representation, warranty, covenant, stipulation, agreement or certification by the County set forth in this Agreement or in any document delivered hereunder; or (ii) the breach by the County of any other term or provision of this Agreement; or (iii) any facts or events occurring prior to the Facility Lease Effective Date and connected with the Facility Assets, the activities of the County or the operation of the Facility; provided, however, that the indemnity shall not apply to any liability arising as a breach of this Agreement by Aurora, or other act or omission by Aurora occurring on or after the Initial Property Closing Date; and provided further that with respect to claim made under this Section 6.9(b), Aurora shall direct requests for indemnification to the County, attention County Attorney. The County shall not be liable to Aurora, under any theory whatsoever, for special, consequential, indirect or incidental damages of any nature, irrespective of whether any party had notice of the possibility of such damages and irrespective of whether resulting from negligence.

(c) County Payments Subject to Appropriation. Subject to the requirements of Section 7.19 herein, all payment obligations of the County under this Agreement are subject to the legal availability of funds duly and properly appropriated for such purpose by the County.

## **ARTICLE VII**

### **MISCELLANEOUS**

Section 7.1 Compliance with Applicable Laws. From and after the Closing Date, the County shall take all actions required to comply with all Applicable Laws relating to its utilization of the Facility Assets.

Section 7.2 Management of Facility as Facility or Similar Facility. After Closing, Manager shall manage the Facility as a comprehensive care facility and an assisted living facility, pursuant to the Management Agreement.

Section 7.3 Dispute Resolution. In the event that any dispute arises relating to the terms or implementation of this Agreement, the Amended Indemnity Escrow Agreement, the Post-Closing Escrow Agreement, the Settlement Agreement, or the Management Agreement, including but not limited to any dispute relating to the County's payment obligations, such dispute will be decided in binding arbitration by Judge Frederic Smalkin (the "Primary Arbitrator") under such procedures as he deems appropriate. Any decision resolving such a dispute will be final and binding, and enforceable in the Circuit Court of Maryland for Anne Arundel County. In the event that the Primary Arbitrator is unable or unwilling to serve, he will be replaced by Andrew Jay Graham (the "Alternate Arbitrator"). In the event the Alternate Arbitrator is unable or unwilling to serve, he will be replaced by designation of a former Maryland judge pursuant to the Maryland Uniform Arbitration Act.

Section 7.4 Further Assurances. Each party shall execute and deliver any instruments and perform any acts that may be necessary or reasonably requested in order to give full effect to the terms of this Agreement. Each party shall use all reasonable efforts to provide such information, execute such further instruments and documents and take such action as may be reasonably requested by the other Parties; provided however, that such actions are not inconsistent with the provisions of this Agreement and do not involve the assumption of obligations other than those which are provided for in this Agreement to carry out the intent of this Agreement.

Section 7.5 Relationship of the Parties. Except as otherwise explicitly provided herein, or by Applicable Laws, no party to this Agreement shall have any responsibility whatsoever with respect to services that are to be provided or contractual obligations that are to be assumed by any other party and nothing in this Agreement shall be deemed to constitute any party a partner, joint venture participant, agent or legal representative of any other party or to create any fiduciary relationship between or among the Parties.

Section 7.6 Waiver. The waiver by any party of a default or of a breach of any provision of this Agreement by the other Parties shall not operate or be construed to operate as a waiver of any subsequent default or breach. The making or the acceptance of a payment by any party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

Section 7.7 Modification. Modifications, waivers or amendments of (or to the provision of) this Agreement shall be effective only if set forth in a written instrument signed by each party hereto after all corporate or other action regarding the authorization for such modification, waivers or amendments has been taken.

Section 7.8 Headings. The captions and headings in this Agreement are for convenience and ease of reference only and in no way define, limit or describe the scope or

intent of this Agreement and such headings do not in any way constitute a part of this Agreement.

Section 7.9 Notices. Any notice or other communication which is required to be given hereunder shall be in writing and shall be deemed to have been validly given if faxed to the telephone number set forth below, delivered in person or mailed by certified or registered mail, postage prepaid, addressed as follows:

If to the County: Frederick County, Maryland  
Winchester Hall  
12 E. Church Street  
Frederick, Maryland 21701  
Attn: County Executive

with copy to: County Attorney  
Winchester Hall  
12 E. Church Street  
Frederick, Maryland 21701

If to Aurora: Aurora Holdings VII, LLC  
Citizens Care and Rehabilitation Center of Frederick,  
LLC  
Odyssey Assisted Living at Montevue, LLC  
8227 Cloverleaf Drive, Suite 309  
Millersville, Maryland 21108  
Attn: Stanley H. Snow  
Telephone: (410) 729-8406

with copy to: Gallagher, Evelius & Jones, LLP  
218 North Charles Street, Suite 400  
Baltimore, Maryland 21201  
Attn: Thomas C. Dame  
Telephone: (410) 347-1331  
Fax: (410) 468-2786  
Email: tdame@gejlaw.com

If notice is sent by fax or e-mail, the original executed copy of the notice shall be mailed or delivered as provided above. Changes in the addresses to which such notices may be directed may be revised from time to time by any party by written notice to the other Parties.

Section 7.10 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the Parties.

Section 7.11 Severability. In the event that any provision of this Agreement shall be determined for any reason to be invalid, illegal or unenforceable in any respect by any court of competent jurisdiction, the Parties shall negotiate in good faith and agree to such amendments,

modifications or supplements of or to this Agreement or to such other appropriate actions as, to the maximum extent practicable in light of such determination, shall implement and give effect to the intentions of the Parties as reflected herein. Notwithstanding such determination, such determination shall not invalidate or render any other provision hereof unenforceable.

Section 7.12 Governing Law. The obligations of the County and Aurora under the terms of this Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Maryland.

Section 7.13 Liability of Officers and Employees. Except to the extent provided by Applicable Laws, no officer, official, commissioner, trustee, agent, representative or employee of any Party or affiliates of any Party shall be charged personally by the other party or held contractually liable there to under any term or provision of this Agreement, because of any Party's execution or attempted execution or because of any breach or alleged breach thereof; provided however, that all Persons and Parties remain solely responsible for any of their own criminal or fraudulent actions.

Section 7.14 Third Party Beneficiaries. It is not intended that this Agreement make any Person or entity a third party beneficiary hereof, notwithstanding the fact that Persons or entities other than Aurora and the County may be benefited thereby.

Section 7.15 Merger Clause. This Agreement (including the Schedules hereto) constitutes the entire agreement and understanding of the Parties with respect to the conveyance of the Aurora Assets and all other matters addressed or referred to herein and supersedes all prior and contemporaneous agreements and understandings, representations and warranties, whether oral or written, relating to such matter.

Section 7.16 Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if the signature and seals thereto and hereto were upon the same instrument.

Section 7.17 Survival. All representations, warranties, covenants, stipulations, certificates, indemnities, and agreements contained herein or in any document delivered pursuant hereto shall survive the consummation of the transactions provided for in this Agreement or two (2) years.

Section 7.18 Public Announcements. During the period commencing on the Contract Date through and including the Closing Date, no Party shall make any public announcement concerning this Agreement or the transactions contemplated herein other than as may be required by the Open Public Meetings Act or Open Public Records Act without at least twenty four (24) hours prior notice to the other Party.

Section 7.19 Appropriation of Funds. If necessary to implement this Agreement, the County Executive of the County agrees, to the extent permitted by applicable law, to do all things lawfully within her powers to request the appropriation of funds by the Frederick County Council, to pay all amounts properly due and payable under this Agreement. This obligation

includes (without limitation) requesting adequate funds be included in the budget submitted to the Frederick County Council to meet the County's obligations hereunder. Nothing in this Section shall obligate the Frederick County Council to make any appropriation.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the County, and Aurora have executed this Agreement, intending to be legally bound hereby as of the day and year first above written.

COUNTY:

ATTEST:

FREDERICK COUNTY, MARYLAND

John L. Mathias

By: Jan H. Gardner  
Jan H. Gardner  
County Executive *gsm*

AURORA:

WITNESS:

AURORA HOLDINGS VII, LLC

Lee M Johnson

By: Stanley H. Snow  
Stanley H. Snow  
President

WITNESS:

CITIZENS CARE AND  
REHABILITATION CENTER OF  
FREDERICK, LLC

Lee M Johnson

By: Stanley H. Snow  
Stanley H. Snow  
President

WITNESS:

ODYSSEY ASSISTED LIVING AT  
MONTEVUE, LLC

Lee M Johnson

By: Stanley H. Snow  
Stanley H. Snow  
President

### List of Exhibits

Exhibit A	-	Description of Facility Real Property
Exhibit B	-	Form of Amended Indemnity Escrow Agreement
Exhibit C	-	Form of Post-Closing Escrow Agreement
Exhibit D	-	Form of Assignment and Assumption Agreement
Exhibit E	-	Form of Bill of Sale (Aurora Assets)
Exhibit F	-	Form of Management Agreement

### List of Schedules

Schedule 2.2(b)(iv) – Vehicles

Schedule 2.2(b)(v) - Furniture and Equipment

Schedule 2.2(b)(vii) - Computer Hardware

Schedule 2.2(b)(viii) - Intellectual Property

Schedule 2.2(b)(ix) - Permits

Schedule 2.2(b)(x) - Personal Property Leases

Schedule 2.2(b)(xi) - Contracts and Agreements

Schedule 2.2(b)(xvi) – Provider Agreements

Schedule 2.2(b)(xvii) – Aurora Additions

Schedule 2.3(a) - Cash and Cash Equivalents

Schedule 2.4 - Purchase Price Allocation

Schedule 4.1(c) - Deposits and Patient Trust Funds

Schedule 4.1(f) – Litigation and Proceedings (Aurora)

Schedule 4.2(f) – Litigation and Proceedings (County)

**EXHIBIT A**

**DESCRIPTION OF FACILITY REAL PROPERTY**



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**Harris, Smariga & Associates, Inc.**

Planners/Engineers/Surveyors  
125 S. Carroll Street, Suite 100/Frederick, MD 21701  
301-662-4488/FAX 301-662-4908

**Description of  
Lease Area  
Over  
North Montevue Campus**

That piece or parcel of land lying along the West Side of Rosemont Avenue and South of Rocky Springs Road, Being Part of the lands Conveyed unto The Board of County Commissioners of Frederick County by deed dated September 2, 1828 and recorded among the land records of Frederick county, Maryland in Liber JS 30 at Folio 157 and being more particularly described as follows.

BEGINNING at a point, said point being number 176 as shown on a Plat entitled "Case Number 07-750FSU, Dedication Plat, Part of the Property of The Board of County Commissioners of Frederick County, Maryland, Liber JS 30 at Folio 157" and recorded among the said land records in Plat Book 86 at Page 9, then following the outlines of said lands the following two (2) courses and distances,

S. 64° 53' 41" E. 58.02' to a point, Thence

S. 45° 07' 21" E. 405.23' to a point, said point lying on the west right of way line of Rosemont Avenue, thence with said road the following course and distance,

By a line curving to the right with a radius of 13565.00' and a length of 400.20', said arc subtended by a chord bearing S. 22° 39' 18" E. for a distance of 400.19' to a point. Thence leaving said right of way and running along the outline of said Lease Area the following Twenty Three (23) courses and distances,

N. 64° 56' 19" E. 21.10' to a point, Thence

S. 68° 52' 55" W. 81.83' to a point, Thence

By a line curving to the left with a radius of 15.12' and a length of 20.17', said arc subtended by a chord bearing S. 30° 39' 50" W. for a distance of 18.70' to a point, Thence

S. 07° 54' 20" E. 22.60' to a point, Thence

S. 82° 05' 40" W. 44.00' to a point, Thence

N. 07° 54' 20" W. 10.24' to a point, Thence



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By a line curving to the left with a radius of 18.00' and a length of 22.73', said arc subtended by a chord bearing N. 44° 05' 17" W. for a distance of 21.25' to a point, Thence

By a line curving to the right with a radius of 317.68' and a length of 36.30', said arc subtended by a chord bearing N. 78° 30' 34" W. for a distance of 36.28' to a point, Thence

S. 68° 37' 35" W. 133.99' to a point, Thence

N. 65° 17' 09" W. 23.90' to a point, Thence

S. 26° 42' 16" W. 25.03' to a point, Thence

By a line curving to the right with a radius of 297.25' and a length of 57.44', said arc subtended by a chord bearing N. 56° 47' 44" W. for a distance of 57.36' to a point, Thence

S. 38° 44' 27" W. 14.75' to a point, Thence

N. 51° 15' 33" W. 15.13' to a point, Thence

S. 43° 43' 11" W. 99.69' to a point, Thence

By a line curving to the right with a radius of 412.00' and a length of 301.03', said arc subtended by a chord bearing N. 27° 01' 03" W. for a distance of 294.38' to a point, Thence

N. 85° 23' 30" W. 4.95' to a point, Thence

N. 04° 36' 30" E. 193.02' to a point, Thence

By a line curving to the left with a radius of 216.50' and a length of 24.07', said arc subtended by a chord bearing N. 01° 25' 25" E. for a distance of 24.06' to a point, Thence

N. 01° 45' 41" W. 109.01' to a point, Thence

By a line curving to the right with a radius of 100.00' and a length of 11.01', said arc subtended by a chord bearing N. 01° 23' 37" E. for a distance of 11.01' to a point, Thence



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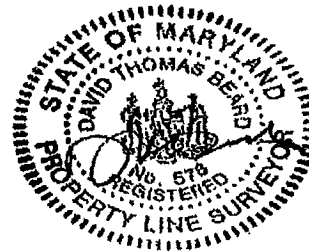
N. 04° 32' 55" E. 193.93' to a point, Thence

By a line curving to the right with a radius of 39.25' and a length of 39.55', said arc subtended by a chord bearing N. 33° 03' 23" E. for a distance of 37.90' to a point, said point lying on the south right of way line of Rocky Springs Road, Thence with said right of way the following course and distance,

S. 84° 52' 00" E. 88.98' to the place of Beginning.

The amount of Land contained by the foregoing amounts to 328,343 square feet or 7.538 acres more or less.

T:\7166-00000\Survey\Descriptions\Lease Area.dwg



Loc. 640005 3/25/15

## **EXHIBIT B**

### **FORM OF AMENDED INDEMNITY ESCROW AGREEMENT**

This **AMENDED INDEMNITY ESCROW AGREEMENT** (this "**Escrow Agreement**") is entered into and effective as of \_\_\_\_\_, by and among Aurora Holdings VII, LLC, a Maryland limited liability company ("**Aurora**"); Frederick County, Maryland ("**the County**"), and Wilmington Trust Company, NA, as escrow agent ("**Escrow Agent**").

#### **RECITALS**

A. The County and Aurora entered into an Asset Purchase Agreement dated as of May 1, 2014 (the "**APA**") for the purchase of that certain 170 bed skilled nursing facility commonly known as Citizens Care and Rehabilitation Center ("**CCRC**") and a 75 unit assisted living facility known as Montevue Assisted Living Facility ("**MALF**" and, together with CCRC, the "**Facility**"), located at 1910 and 1920 Rosemont Avenue, Frederick, Maryland 21702, and the property and real estate owned by the County and used in connection therewith.

B. Pursuant to the APA, the Parties hereto agreed in a May 1, 2014 Indemnity Escrow Agreement to establish with Escrow Agent an indemnity escrow holdback (the "**Indemnity Escrow**") in the amount of Three Hundred Thousand Dollars (\$300,000.00) which the County funded on July 1, 2014, in order to provide readily available funds for the satisfaction of the indemnification obligations of the County as set forth in the APA.

C. The County and Aurora have terminated the APA, but wish to maintain the Indemnity Escrow Agreement in order to implement a Purchase and Sale Agreement and Management Agreement executed contemporaneously with this Amended Indemnity Escrow Agreement.

#### **AGREEMENT**

NOW, THEREFORE, for and in consideration of the above recitals and other good and valuable consideration, the parties hereto agree as follows:

1. This Amended Indemnity Escrow Agreement supercedes and supplants in its entirety the May 1, 2014 Indemnity Escrow Agreement.
2. **Appointment of Agent.** The parties hereby continue the appointment of Escrow Agent, as escrow agent, in accordance with the terms and conditions set forth herein, and Escrow Agent hereby accepts such appointment. Escrow Agent shall continue to act as agent hereunder for the parties hereto entitled to any portion or portions of the Escrowed Funds (as hereinafter defined).

3. **Establishment of Escrow.** On July 1, 2014, the County deposited Three Hundred Thousand Dollars (\$300,000.00) into escrow (the "**Escrow**") with the Escrow Agent, which funds were to be the "**Indemnity Escrow**" as set forth in Section 2.4(b)(ii) of the APA. The Escrow Holdback shall continue to be held in an escrow account (the "**Escrow Account**") subject to the terms and conditions of this Amended Indemnity Escrow Agreement (the aggregate amounts so deposited, inclusive of any interest thereon as provided herein, shall be the "**Escrowed Funds**").
4. After the establishment of the Indemnity Escrow pursuant to the APA, Aurora made claims to recover portions of the Escrow Amount pursuant to the Indemnity Escrow Agreement. The County opposed the claims and the claims have been released by Aurora contemporaneously with the execution of the Settlement Agreement and Purchase and Sale Agreement.
5. **Investment of Escrowed Funds.** Until the full release of the Escrowed Funds pursuant to this Amended Indemnity Escrow Agreement, the Escrowed Funds shall be continuously invested by Escrow Agent in accordance with written instructions of the County without the requirement of consent by Aurora and any interest so earned shall be distributed to the County upon the final release of the Escrowed Funds pursuant to the terms hereof.
6. **Release from Escrow Account.**
  - a. If, pursuant to this Amended Indemnity Escrow Agreement, Aurora shall be entitled to receive a reimbursement or indemnity payment from the County, Aurora may request such payment out of the Escrowed Funds (an "**Escrow Claim**"), in which event Aurora shall deliver a written notice to Escrow Agent with a copy to the County, directing the Escrow Agent to deliver all or such portion of the Escrowed Funds to Aurora. Aurora shall be entitled to indemnity from the County (and thus payment from the Escrowed Funds) for all claims, debts, liabilities, obligations, losses, damages, fines, penalties, judgments, assessments, damages, costs and expenses relating to (1) any facts or events occurring prior to the Facility Lease Effective Date and connected with the Facility Assets as defined in the APA, the activities of the County or the operation of the Facility; or (2) any Medicare or Medicaid claims concerning facts or events occurring prior to the Facility Lease Effective Date as defined in the APA and connected with the operations of the Facility; or (3) any deficiencies in Patient Trust Funds relating to the operation of the Facility prior to the Facility Lease Effective Date as defined in the APA. In the event that within ten (10) days after the County's receipt of such notice the County shall not have delivered a written objection to Aurora and Escrow Agent, then Escrow Agent shall promptly deliver all or such portion of the Escrowed Funds to Aurora.
  - b. Upon its receipt of any objection, notice or demand for all or a portion of the Escrowed Funds (or so much thereof as is then held by Escrow Agent) delivered by the County or Aurora, Escrow Agent shall promptly deliver a copy thereof to each

other party. Upon timely receipt of a notice of objection, Escrow Agent shall continue to hold the Escrowed Funds (or so much thereof as is then held by Escrow Agent). Such notice of objection shall (i) refer to this Amended Indemnity Escrow Agreement, the Escrow Claim to which it relates, (ii) state that Aurora is not entitled to payment of the Escrowed Funds, (iii) describe in reasonable detail the reasons Aurora is not entitled to the Escrowed Funds, and (iv) direct Escrow Agent to retain the Escrowed Funds until the objections set forth in the notice of objection have been resolved.

- c. If the County issues a notice of objection, Aurora and the County shall meet, by telephone or in person, promptly and use all reasonable efforts in good faith to resolve promptly the County's objections set forth in the notice of objection. If Aurora and the County are able to resolve such objections (in whole or in part), Aurora and the County shall deliver a written notice to Escrow Agent instructing Escrow Agent to disburse the Escrow Funds in accordance with such resolution. If Aurora and the County are unable to resolve such objections within thirty (30) days after delivery of the notice of objection, either Aurora or the County may commence an arbitration in accordance with this Agreement to determine which party is entitled to the Escrowed Funds in accordance with the terms of this Agreement. Either Aurora or the County may deliver the written decision of the arbitrator to Escrow Agent, and such decision shall constitute written instructions to Escrow Agent to disburse the Escrowed Funds in accordance with such decision.
- d. Neither Aurora nor the County shall make any Escrow Claim or issue a notice of objection unless such party has a reasonable good faith basis for claiming the Escrowed Funds, or objecting to an Escrow Claim, pursuant to this Agreement.
- e. In the event that any dispute arises relating to this Escrow Agreement, such dispute will be handled in accordance with the process set forth in Section 7.3 of the Purchase and Sale Agreement.
- f. In the event of any dispute with respect to the Escrow Account or the Escrowed Funds, the interpretation of this Amended Indemnity Escrow Agreement or the rights and obligations of the parties hereunder, or to the propriety of any action contemplated by the Escrow Agent hereunder, or if the Escrow Agent in good faith is in doubt as to what action should be taken hereunder, then in any such case the Escrow Agent shall not be obligated to resolve the dispute or disagreement or to make any disbursement of all or any portion of the Escrowed Funds, but may commence an action in the nature of an interpleader and seek to deposit such funds with a court of competent jurisdiction, and thereby shall be discharged from any further duty or obligation with respect to the Escrow Account and any Escrowed Funds. The Escrow Agent may, in its sole discretion in lieu of filing such action in interpleader, elect to cease to perform under this Amended Indemnity Escrow Agreement and to ignore all instructions received in connection herewith until Escrow Agent has received a written notice of resolution signed by the parties to such dispute or disagreement or a

final and non-appealable order of a court with jurisdiction over the matter directing a disposition of the Escrowed Funds.

**7. Exculpation and Indemnification of Escrow Agent.**

- a. Escrow Agent shall have no duties or responsibilities other than those expressly set forth herein. Except for the duties and responsibilities of Escrow Agent expressly set forth herein, Escrow Agent shall have no duty to enforce any obligation of any person to make any payment or delivery, or to direct or cause any payment or delivery to be made, or to enforce any obligation of any person to perform any other act. Escrow Agent shall be under no liability to other parties hereto or to anyone else by reason of any failure on the part of any other party hereto or any maker, guarantor, endorser or other signatory of any document or any other person to perform such person's obligations under any such document. Except for instructions given to Escrow Agent by the other parties hereto relating to the Escrowed Funds under this Amended Indemnity Escrow Agreement and except as otherwise specifically provided for herein, Escrow Agent shall not be obligated to recognize any agreement between any or all of the persons referred to herein, notwithstanding that references thereto may be made herein and whether or not it has knowledge thereof.
- b. Escrow Agent shall not be liable to the other parties hereto or to anyone else for any action taken or omitted by it, or any action suffered by it to be taken or omitted, in good faith and in the exercise of its own best judgment. Escrow Agent may rely conclusively and shall be protected in acting upon any order, notice, demand, certificate, opinion or advice of counsel (including counsel chosen by Escrow Agent), statement, instrument, report or other paper or document (not only as to its due execution and the validity and effectiveness of its provisions, but also as to the truth and acceptability of any information therein contained) which is believed by Escrow Agent to be genuine and to be signed or presented by the proper person or persons. Escrow Agent shall not be bound by any notice or demand, or any waiver, modification, termination or rescission of this Amended Indemnity Escrow Agreement or any of the terms hereof, unless evidenced by a writing delivered to Escrow Agent signed by the other parties hereto, and if the duties or rights of Escrow Agent are affected, unless it shall give its prior written consent thereto.
- c. Escrow Agent shall be, jointly and severally, indemnified and held harmless by the County and Aurora from and against any and all expenses (including reasonable counsel fees and disbursements and including any liability for taxes and for any penalties in respect of taxes, or investment income on the Escrowed Funds) or loss suffered by Escrow Agent in connection with any action, suit or other proceeding involving any claim, or in connection with any claim or demand, which in any way, directly or indirectly, arises out of or relates to this Amended Indemnity Escrow Agreement, the services of Escrow Agent hereunder, the monies or other property held by it hereunder, or the monies or any income

earned from investment of such monies, unless it shall then have been judicially determined that such claim or demand arises out of the gross negligence, willful misconduct or bad faith of Escrow Agent. Promptly after the receipt by Escrow Agent of notice of any demand or claim or the commencement of any action, suit or proceeding, Escrow Agent shall, if a claim in respect thereof is to be made against any of the other parties hereto, notify such other parties thereof in writing; but the failure by Escrow Agent to give such notice shall not relieve any party from any liability which such party may have to Escrow Agent hereunder. For the purposes hereof, the term "expense or loss" shall include all amounts paid or payable to satisfy any claim, demand or liability, or in settlement of any claim, demand, action, suit or proceeding settled with the express written consent of Escrow Agent and the other parties hereto, and all costs and expenses, including, but not limited to, counsel fees and disbursements, paid or incurred in investigating or defending against any such claim, demand, action, suit or proceeding. Notwithstanding anything herein contained to the contrary, as between the County and Aurora, if Escrow Agent is entitled to indemnification for any expense or loss as a result of a dispute by or among the County and Aurora, as to the party entitled to receive the Escrowed Funds, the non-prevailing party shall indemnify and hold harmless the prevailing party for all such expenses and losses.

8. **Commingle.** Except as to deposits of funds for which Escrow Agent has received express written direction concerning investment or other handling, the parties hereto agree that the Escrow Agent shall be under no duty to invest or reinvest any deposits at any time held by it hereunder, and further, that escrow trustee may commingle such deposits with other deposits or with its own funds and may use any part or all such funds for its own benefit without obligations to any party for interest or earnings derived thereby, if any; provided, however, nothing herein shall diminish Escrow Agent's obligation to apply the full amount of the Escrowed Funds in accordance with the terms of this Amended Indemnity Escrow Agreement. In the event the Escrow Agent is requested to invest deposits hereunder, the Escrow Agent is not to be held responsible for any loss of principal or interest which may be incurred as a result of making the investments or redeeming said investment for the purposes of this Amended Indemnity Escrow Agreement, except in the event of Escrow Agent's own negligence.
9. **Compensation of Escrow Agent.** Escrow Agent shall be entitled to the standard compensation for all services rendered by it hereunder. the County shall pay one-half (½) of the cost of Escrow Agent's compensation and Escrow Agent's expenses and Aurora shall pay the remaining one-half (½) of the cost of Escrow Agent's compensation and Escrow Agent's expenses.
10. **Disbursement of Escrowed Funds Upon Joint Order or Judgment.**
  - a. Unless provided otherwise to the contrary in this Amended Indemnity Escrow Agreement, Escrow Agent shall disburse the Escrowed Funds or any part thereof,

pursuant to the terms of any joint written order of the County and Aurora or the terms of any final nonappealable judgment of a court of competent jurisdiction.

- b. Escrow Agent shall disburse the remaining balance of the Escrowed Funds to the County upon the County's demand and after ten (10) business days written notice sent by Escrow Agent to each other party on the third anniversary of the Initial Closing if at the end of said ten (10) business day period: (i) Escrow Agent has not disbursed all of the Escrowed Funds pursuant to Section 6(a) of this Agreement; (ii) Escrow Agent has not received an order from a court of competent jurisdiction prohibiting the disbursement of such Escrowed Funds; or (iii) there does not exist a pending or unresolved claim or written objection to such final disbursement by any party hereto. If, at the end of said ten (10) business day period, there does exist a pending or unresolved claim or written objection to such final disbursement by any party hereto, and there is no prohibition on the disbursement of the Escrowed Funds as described in subpart (ii) of this paragraph, Escrow Agent shall disburse to the County the then-remaining balance of the Escrowed Funds less the amount claimed under such pending or unresolved claim or written objection to such final disbursement.

**11. Resignation of Escrow Agent; Appointment of Successor.**

- a. Escrow Agent may at any time resign as Escrow Agent by giving written notice of its resignation to the parties hereto pursuant to the notice section of this Amended Indemnity Escrow Agreement, at least thirty (30) days prior to the date specified for such resignation to take effect.
- b. If Escrow Agent shall give written notice of its resignation pursuant to this Section, the parties hereto shall appoint a successor escrow agent to serve as Escrow Agent pursuant to the terms of this Amended Indemnity Escrow Agreement. Such appointment shall be effective as of the effective date of the resigning Escrow Agent's resignation.

**12. Termination of this Amended Indemnity Escrow Agreement and Closing of Escrow Account.** This Amended Indemnity Escrow Agreement shall terminate on May 1, 2017 or upon the date that the last of any Escrow Claims unresolved on May 1, 2017 shall be finally settled and resolved. Upon termination of this Amended Indemnity Escrow Agreement, the Escrow Agent shall return all remaining funds in the Escrow Account to the County, pursuant to the procedures of Section 10(b) of this Agreement.

**13. Notices.** All notices required or permitted hereunder shall be in writing and shall be sent as set forth in Exhibit A, attached hereto and incorporated herein. Notices may be sent (a) by certified or registered mail, return receipt requested, (b) by nationally recognized overnight delivery service or (c) via electronic mail (provided that the original shall be simultaneously delivered by one of the other methods permitted herein). Notices shall be

deemed given on the date of receipt (or refusal) as indicated on the receipt, as the case may be.

14. **No Oral Amendments.** The provisions of this Amended Indemnity Escrow Agreement may be waived or amended by the parties hereto, provided such action is evidenced by written instrument setting forth the terms of the waiver or amendment and signed by the party by whom such waiver is given or by all parties in the case of an amendment.
15. **Governing Law.** This Amended Indemnity Escrow Agreement shall be governed and construed in accordance with the laws of the State of Maryland.
16. **Severability.** If any provision of this Amended Indemnity Escrow Agreement or the application thereof to any person or circumstance is held invalid or unenforceable, the remainder of this Amended Indemnity Escrow Agreement and the application of such provision to other persons or circumstances shall not be affected thereby and the invalid or unenforceable provision of this Amended Indemnity Escrow Agreement shall be severable in any such instance.
17. **Counterparts.** This Amended Indemnity Escrow Agreement may be executed in several counterparts, or by electronic submission, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same agreement.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the undersigned have duly executed this Amended Indemnity Escrow Agreement by the parties legally entitled to do so as of the day and year first set forth above.

**SELLER:**

**FREDERICK COUNTY, MARYLAND**

**PURCHASER:**

**AURORA HOLDINGS VII, LLC,**  
a Maryland limited liability company

By: \_\_\_\_\_

Jan H. Gardner  
County Executive

By: \_\_\_\_\_

Stanley H. Snow  
President

**ESCROW AGENT:**

**WILMINGTON TRUST COMPANY, NA**

By: \_\_\_\_\_

Sarah A. Stokes  
Trust Officer

**EXHIBIT A**

**COUNTY:**

Frederick County, Maryland  
Winchester Hall  
12 E. Church Street  
Frederick, Maryland 21702  
Attn: County Executive  
Email: \_\_\_\_\_

**With a Copy To:**

County Attorney  
Winchester Hall  
12 E. Church Street  
Frederick, Maryland 21702  
Email: \_\_\_\_\_

**AURORA:**

Aurora Holdings VII, LLC  
8227 Cloverleaf Drive, Suite 309  
Millersville, MD 21108  
Attn: Stanley H. Snow  
Email: ssnow@aurorahealthmgt.com

**With a Copy To:**

Gallagher Evelius & Jones LLP  
218 North Charles, Suite 400  
Baltimore, MD 21201  
Attn: Thomas C. Dame  
Email: tdame@gejlaw.com

**ESCROW AGENT:**

**WILMINGTON TRUST COMPANY, NA**

Wilmington Trust Company, NA  
25 South Charles Street, 11<sup>th</sup> Floor  
Baltimore, MD 21201  
Attn: Sarah A. Stokes  
Email: sstokes@wilmingtontrust.com

## EXHIBIT C

### FORM OF POST-CLOSING ESCROW AGREEMENT

This **POST-CLOSING ESCROW AGREEMENT** (this "**Escrow Agreement**") is entered into and effective as of \_\_\_\_\_, 1, 2016, by and among Aurora Holdings VII, LLC ("**Holdings VII**"), a Maryland limited liability company, Citizens Care and Rehabilitation Center of Frederick, LLC ("**Citizens**"), a Maryland limited liability company, and Odyssey Assisted Living at Montevue, LLC ("**Odyssey**"), a Maryland limited liability company, (Holdings VII, Citizens, and Odyssey collectively as "**Aurora**"); Frederick County, Maryland (the "**County**"), and Fidelity National Title Insurance Company, as escrow agent ("**Escrow Agent**").

### **RECITALS**

A. Aurora and the County previously entered into that certain Asset Purchase Agreement dated as of May 1, 2014 (the "**APA**") for the purchase of a 170 bed skilled nursing facility commonly known as Citizens Care and Rehabilitation Center ("**CCRC**") and a 75 unit assisted living facility known as Montevue Assisted Living Facility ("**MALF**" and, together with CCRC, the "**Facility**"), located at 1910 and 1920 Rosemont Avenue, Frederick, Maryland 21702.

B. Subsequently Aurora and the County agreed not to proceed with the transaction set forth in the APA, and Aurora has agreed to sell, and the County has agreed to purchase, the Aurora Assets, all as set forth in a Purchase and Sale Agreement dated as of May \_\_\_\_, 2016 (the "**PSA**").

C. Pursuant to the PSA, the parties hereto have agreed to deposit with Escrow Agent the amount of Two Million Three Hundred Fifty Thousand Dollars (\$2,350,000) which shall be funded by the County on the Closing Date under the PSA from a portion of the "Acquisition Price" (as defined in the PSA) payable by the County to Aurora, in order to provide readily available funds for the satisfaction of the Acquisition Price as set forth in the PSA, and which upon satisfaction of certain conditions, is payable to Aurora. All capitalized terms not defined herein shall have the meanings set forth for such terms in the PSA.

### **AGREEMENT**

NOW, THEREFORE, for and in consideration of the above recitals and other good and valuable consideration, the parties hereto agree as follows:

1. **Appointment of Agent.** The parties hereby appoint Escrow Agent, as escrow agent, in accordance with the terms and conditions set forth herein, and Escrow Agent hereby accepts such appointment. Escrow Agent shall act as agent hereunder for the parties hereto entitled to any portion or portions of the Escrowed Funds (as hereinafter defined).
2. **Establishment of Escrow.** On the Closing Date, the County shall deposit the sum of Two Million Three Hundred Fifty Thousand Dollars (\$2,350,000) into escrow (the

**"Escrow"**) with the Escrow Agent. The deposited funds shall be held in an escrow account (the **"Escrow Account"**) subject to the terms and conditions of this Escrow Agreement (the aggregate amounts so deposited, inclusive of any interest thereon as provided herein, shall be the **"Escrowed Funds"**).

3. **Investment of Escrowed Funds.** Until the full release of the Escrowed Funds, the Escrowed Funds shall be continuously invested by Escrow Agent in accordance with written instructions of Aurora without the requirement of consent by the County and any interest so earned shall be distributed to Aurora upon the final release of the Escrowed Funds pursuant to the terms hereof. The County shall not be responsible for the replenishment of the Escrowed Funds should the balance fall below the deposited amount.
4. **Release from Escrow Account.**
  - a. On November 1, 2016, or such earlier date on which the Management Agreement is terminated by either the County or Aurora, a portion of the Escrowed Funds in the amount of One Million Eight Hundred Fifty Thousand Dollars (\$1,850,000) shall be disbursed by the Escrow Agent to Aurora, subject to paragraph (c) below.
  - b. On January 1, 2018, or such earlier date on which the Management Agreement is terminated by either the County or Aurora, the entire remaining balance of the Escrowed Funds shall be disbursed the Escrow Agent to Aurora, subject to paragraph (c) below.
  - c. The amount to be released to Aurora pursuant to paragraphs (a) and (b) above shall not be released if the "Release Conditions" (defined below) are not met on such date, and the respective payments shall be delayed until the Release Conditions are met (but in any case not beyond January 1, 2018, unless the Management Agreement has been extended beyond that date). The "Release Conditions" are as follows: (i) the CCRC has achieved, as of the end of the preceding calendar month, based on the six month period then ending, an average occupancy of no less than eighty-six percent (86%); and (ii) the CCRC has not been decertified from participation in the Medicaid program; provided however, if the CCRC has been decertified from participation in the Medicaid program, this condition shall be deemed satisfied once the CCRC has been reinstated.
  - d. No later than twenty (20) days prior to such date of Escrowed Funds are to be released to Aurora, the County may issue a notice of objection; provided the County has a good faith basis for asserting the Release Conditions have not been met. Any notice of objection shall (i) refer to this Agreement, the PSA and the payment to which it relates, (ii) state that Aurora is not entitled to payment of the Escrowed Funds, (iii) describe in detail the reasons Aurora is not entitled to the Escrowed Funds, and (iv) direct Escrow Agent to retain the Escrowed Funds until the objections set forth in the notice of objection have been resolved. Upon its receipt of any notice

of objection delivered by the County, Escrow Agent shall promptly deliver a copy thereof to Aurora. Upon timely receipt of a notice of objection, Escrow Agent shall continue to hold the Escrowed Funds (or so much thereof as is then held by Escrow Agent). If a notice of objection is not timely received by the Escrow Agent, Escrow Agent shall disburse the Escrowed Funds to Aurora on the dates set forth herein.

- e. If the County issues a notice of objection, the County and Aurora shall meet, by telephone or in person, promptly and use all reasonable efforts in good faith to resolve promptly the objections set forth in the notice of objection. If the County and Aurora are able to resolve such objections (in whole or in part), the County and Aurora shall deliver a joint written notice to Escrow Agent instructing Escrow Agent to disburse the Escrow Funds in accordance with such resolution. If the County and Aurora are unable to resolve such objections within thirty (30) days after delivery of the notice of objection, either the County or Aurora may commence an arbitration in accordance with this Agreement to determine whether a party is entitled to the Escrowed Funds in accordance with the terms of this Agreement and the PSA. Either the County or Aurora may deliver the written decision of the arbitrator to Escrow Agent, and such decision shall constitute written instructions to Escrow Agent to disburse the Escrowed Funds in accordance with such decision.
- f. In the event that any dispute arises relating to the terms or implementation of this Escrow Agreement, such dispute will be handled in accordance with the process set forth in Section 7.3 fo the PSA.
- g. In the event of any dispute with respect to the Escrow Account or the Escrowed Funds, the interpretation of this Escrow Agreement or the rights and obligations of the parties hereunder, or to the propriety of any action contemplated by the Escrow Agent hereunder, or if the Escrow Agent in good faith is in doubt as to what action should be taken hereunder, then in any such case the Escrow Agent shall not be obligated to resolve the dispute or disagreement or to make any disbursement of all or any portion of the Escrowed Funds, but may commence an action in the nature of an interpleader and seek to deposit such funds with a court of competent jurisdiction, and thereby shall be discharged from any further duty or obligation with respect to the Escrow Account and any Escrowed Funds, which shall remain subject to arbitration as provided above. The Escrow Agent may, in its sole discretion in lieu of filing such action in interpleader, elect to cease to perform under this Escrow Agreement and to ignore all instructions received in connection herewith until Escrow Agent has received a written notice of resolution signed by the parties to such dispute or disagreement or a final and non-appealable order of a court with jurisdiction over the matter directing a disposition of the Escrowed Funds.

**5. Exculpation and Indemnification of Escrow Agent.**

- a. Escrow Agent shall have no duties or responsibilities other than those expressly set forth herein. Except for the duties and responsibilities of Escrow Agent

expressly set forth herein, Escrow Agent shall have no duty to enforce any obligation of any person to make any payment or delivery, or to direct or cause any payment or delivery to be made, or to enforce any obligation of any person to perform any other act. Escrow Agent shall be under no liability to other parties hereto or to anyone else by reason of any failure on the part of any other party hereto or any maker, guarantor, endorser or other signatory of any document or any other person to perform such person's obligations under any such document. Except for instructions given to Escrow Agent by the other parties hereto relating to the Escrowed Funds under this Escrow Agreement and except as otherwise specifically provided for herein, Escrow Agent shall not be obligated to recognize any agreement between any or all of the persons referred to herein, notwithstanding that references thereto may be made herein and whether or not it has knowledge thereof.

- b. Escrow Agent shall not be liable to the other parties hereto or to anyone else for any action taken or omitted by it, or any action suffered by it to be taken or omitted, in good faith and in the exercise of its own best judgment. Escrow Agent may rely conclusively and shall be protected in acting upon any order, notice, demand, certificate, opinion or advice of counsel (including counsel chosen by Escrow Agent), statement, instrument, report or other paper or document (not only as to its due execution and the validity and effectiveness of its provisions, but also as to the truth and acceptability of any information therein contained) which is believed by Escrow Agent to be genuine and to be signed or presented by the proper person or persons. Escrow Agent shall not be bound by any notice or demand, or any waiver, modification, termination or rescission of this Escrow Agreement or any of the terms hereof, unless evidenced by a writing delivered to Escrow Agent signed by the other parties hereto, and if the duties or rights of Escrow Agent are affected, unless it shall give its prior written consent thereto.
- c. Escrow Agent shall be, jointly and severally, indemnified and held harmless by Aurora and the County from and against any and all expenses (including reasonable counsel fees and disbursements and including any liability for taxes and for any penalties in respect of taxes, or investment income on the Escrowed Funds) or loss suffered by Escrow Agent in connection with any action, suit or other proceeding involving any claim, or in connection with any claim or demand, which in any way, directly or indirectly, arises out of or relates to this Escrow Agreement, the services of Escrow Agent hereunder, the monies or other property held by it hereunder, or the monies or any income earned from investment of such monies, unless it shall then have been judicially determined that such claim or demand arises out of the gross negligence, willful misconduct or bad faith of Escrow Agent. Promptly after the receipt by Escrow Agent of notice of any demand or claim or the commencement of any action, suit or proceeding, Escrow Agent shall, if a claim in respect thereof is to be made against any of the other parties hereto, notify such other parties thereof in writing; but the failure by Escrow Agent to give such notice shall not relieve any party from any liability

which such party may have to Escrow Agent hereunder. For the purposes hereof, the term "expense or loss" shall include all amounts paid or payable to satisfy any claim, demand or liability, or in settlement of any claim, demand, action, suit or proceeding settled with the express written consent of Escrow Agent and the other parties hereto, and all costs and expenses, including, but not limited to, counsel fees and disbursements, paid or incurred in investigating or defending against any such claim, demand, action, suit or proceeding. Notwithstanding anything herein contained to the contrary, as between Aurora and the County, if Escrow Agent is entitled to indemnification for any expense or loss as a result of a dispute by or among Aurora and the County, as to the party entitled to receive the Escrowed Funds, the non-prevailing party shall indemnify and hold harmless the prevailing party for all such expenses and losses.

6. **Commingle.** Except as to deposits of funds for which Escrow Agent has received express written direction concerning investment or other handling, the parties hereto agree that the Escrow Agent shall be under no duty to invest or reinvest any deposits at any time held by it hereunder, and further, that Escrow Agent may commingle such deposits with other deposits or with its own funds and may use any part or all such funds for its own benefit without obligations to any party for interest or earnings derived thereby, if any; provided, however, nothing herein shall diminish Escrow Agent's obligation to apply the full amount of the Escrowed Funds in accordance with the terms of this Escrow Agreement. In the event the Escrow Agent is requested to invest deposits hereunder, the Escrow Agent is not to be held responsible for any loss of principal or interest which may be incurred as a result of making the investments or redeeming said investment for the purposes of this Escrow Agreement, except in the event of Escrow Agent's own negligence.
7. **Compensation of Escrow Agent.** Escrow Agent shall be entitled to the standard compensation for all services rendered by it hereunder. Aurora shall pay one-half (½) of the cost of Escrow Agent's compensation and Escrow Agent's expenses and the County shall pay the remaining one-half (½) of the cost of Escrow Agent's compensation and Escrow Agent's expenses.
8. **Disbursement of Escrowed Funds Upon Joint Order or Judgment.**
  - a. Unless provided otherwise to the contrary in this Escrow Agreement, Escrow Agent shall disburse the Escrowed Funds or any part thereof, pursuant to the terms of any joint written order of Aurora and the County or the terms of any final nonappealable judgment of a court of competent jurisdiction enforcing the decision reached in arbitration as provided herein.
9. **Resignation of Escrow Agent; Appointment of Successor.**
  - a. Escrow Agent may at any time resign as Escrow Agent by giving written notice of its resignation to the parties hereto pursuant to the notice section of this Escrow

Agreement, at least thirty (30) days prior to the date specified for such resignation to take effect.

- b. If Escrow Agent shall give written notice of its resignation pursuant to this Section, the parties hereto shall appoint a successor escrow agent to serve as Escrow Agent pursuant to the terms of this Escrow Agreement. Such appointment shall be effective as of the effective date of the resigning Escrow Agent's resignation.
10. **Termination of Escrow Agreement and Closing of Escrow Account.** This Escrow Agreement shall terminate on January 1, 2018 or (if later) upon the date that the last of any Escrow Claims shall be finally settled and resolved. Upon termination of this Escrow Agreement, the Escrow Agent shall return all remaining funds in the Escrow Account to Aurora, pursuant to the procedures of this Agreement.
11. **Notices.** All notices required or permitted hereunder shall be in writing and shall be sent as set forth in Exhibit A, attached hereto and incorporated herein. Notices may be sent (a) by certified or registered mail, return receipt requested, (b) by nationally recognized overnight delivery service or (c) via electronic mail (provided that the original shall be simultaneously delivered by one of the other methods permitted herein). Notices shall be deemed given on the date of receipt (or refusal) as indicated on the receipt, as the case may be.
12. **No Oral Amendments.** The provisions of this Escrow Agreement may be waived or amended by the parties hereto, provided such action is evidenced by written instrument setting forth the terms of the waiver or amendment and signed by the party by whom such waiver is given or by all parties in the case of an amendment.
13. **Governing Law.** This Escrow Agreement shall be governed and construed in accordance with the laws of the State of Maryland.
14. **Severability.** If any provision of this Escrow Agreement or the application thereof to any person or circumstance is held invalid or unenforceable, the remainder of this Escrow Agreement and the application of such provision to other persons or circumstances shall not be affected thereby and the invalid or unenforceable provision of this Escrow Agreement shall be severable in any such instance.
15. **Counterparts.** This Escrow Agreement may be executed in several counterparts, or by electronic submission, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same agreement.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the undersigned have duly executed this Escrow Agreement by the parties legally entitled to do so as of the day and year first set forth above.

**COUNTY:**

**FREDERICK COUNTY, MARYLAND**

By: \_\_\_\_\_

Jan H. Gardner  
County Executive

**AURORA:**

**AURORA HOLDINGS VII, LLC,**  
a Maryland limited liability company

By: \_\_\_\_\_

Stanley H. Snow  
President

**ESCROW AGENT:**

**FIDELITY NATIONAL TITLE  
INSURANCE COMPANY**

By: \_\_\_\_\_

Name: James D. Fisher  
Its: Vice President

**CITIZENS CARE AND  
REHABILITATION CENTER OF  
FREDERICK, LLC,**  
a Maryland limited liability company

By: \_\_\_\_\_

Stanley H. Snow  
President

**ODYSSEY ASSISTED LIVING AT  
MONTEVUE, LLC,**  
a Maryland limited liability company

By: \_\_\_\_\_

Stanley H. Snow  
President

**EXHIBIT A**

**COUNTY:**

Frederick County  
Winchester Hall  
12 E. Church Street  
Frederick, Maryland 21702  
Attn: Jan H. Gardner, County Executive  
Email: \_\_\_\_\_

**With a Copy To:**

County Attorney  
Winchester Hall  
12 E. Church Street  
Frederick, Maryland 21702  
Email: \_\_\_\_\_

**AURORA:**

Aurora Holdings VII, LLC  
8227 Cloverleaf Drive, Suite 309  
Millersville, MD 21108  
Attn: Stanley H. Snow  
Email: ssnow@aurorahealthmgt.com

**With a Copy To:**

Gallagher Evelius & Jones LLP  
218 North Charles, Suite 400  
Baltimore, MD 21201  
Attn: Thomas C. Dame  
Email: tdame@gejlaw.com

**ESCROW AGENT:**

**FIDELITY NATIONAL TITLE  
INSURANCE COMPANY**

Fidelity National Title Insurance Company  
9891 Broken Land Parkway, Suite 300  
Columbia, Maryland 21046  
Attn: James D. Fisher  
Email: JAMES.FISHER@FNF.COM

## **EXHIBIT D**

### **FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT**

**THIS ASSIGNMENT AND ASSUMPTION AGREEMENT** is made as of the \_\_\_\_ day of \_\_\_\_\_, 2016, (the "**Agreement**") by and among Aurora Holdings VII, LLC ("Holdings VII"), a Maryland limited liability company, Citizens Care and Rehabilitation Center of Frederick, LLC ("Citizens"), a Maryland limited liability company, and Odyssey Assisted Living at Montevue, LLC ("Odyssey"), a Maryland limited liability company, (Holdings VII, Citizens, and Odyssey collectively as "**Aurora**"), and Frederick County, Maryland, a body politic and corporate and a political subdivision of the State of Maryland (the "**County**"), (Aurora and the County being sometimes referred to herein as the "**Parties**"). Certain capitalized terms used herein are defined in Article I.

### **WITNESSETH:**

**WHEREAS**, the Parties have entered into an Purchase and Sale Agreement dated May \_\_\_\_, 2016 (the "**PSA**") pursuant to which the County had agreed to purchase, and Aurora had agreed to sell, all of Aurora's right, title and interest as purchaser under an Asset Purchase Agreement dated May 1, 2014 (the "**APA**"), and all of Aurora's rights to lease and operate such property under a Facility Lease dated May 1, 2014 (the "**Facility Lease**") and all documents related thereto between the County and Aurora.

**WHEREAS**, as provided in the PSA, the County wishes to assume from the County, and the County desires to assign to the County, all of the Assigned Contracts (as defined below).

**NOW, THEREFORE**, in consideration of the foregoing and the mutual covenants, agreements and warranties herein contained, the parties agree as follows:

### **ARTICLE I DEFINITIONS**

1.1 **Definitions.** Capitalized terms not defined herein shall have the meaning set forth in the PSA. The following terms shall have the following meanings for the purposes of this Agreement:

**"Affiliate"** shall mean, with respect to any specified Person, (a) any other Person which, directly or indirectly, owns or controls, is under common ownership or control with, or is owned or controlled by, such specified Person, (b) any other Person which is a director, officer or partner or is, directly or indirectly, the beneficial owner of ten percent (10%) or more of any class or series of equity securities of the specified Person or a Person described in clause (a) of this paragraph, or (c) another Person of which the specified Person is a director, officer or partner or is, directly or indirectly, the beneficial owner of ten percent (10%) or more of any class of equity securities.

**"Agreement"** shall mean this Assignment and Assumption Agreement, including all exhibits and schedules hereto, as it may be amended from time to time.

**"Contract"** shall mean any contract, lease, commitment, understanding, sales order, purchase order, agreement, indenture, mortgage, note, bond, right, warrant, instrument, plan, permit or license, whether written or oral, which is intended or purports to be binding and enforceable.

**"Governmental Authority"** shall mean the government of the United States or any foreign country, any state or political subdivision thereof, or any entity, body or authority exercising executive, legislative, judicial, regulatory, administrative or other governmental functions or any court, department, commission, board, agency, instrumentality or administrative body of any of the foregoing.

**"Law"** shall mean any law, statute, regulation, ordinance, rule, order, decree, judgment, consent decree, settlement agreement or governmental requirement enacted, promulgated, or entered into, agreed or imposed by any Governmental Authority.

**"Lien"** shall mean any mortgage, lien, charge, restriction, pledge, security interest, option, claim, easement, encroachment or encumbrance.

**"Person"** shall mean any individual, corporation, proprietorship, firm, partnership, limited partnership, limited liability company, trust, association, Governmental Authority or other entity.

## **ARTICLE II ASSIGNMENT AND ASSUMPTION OF ASSETS**

2.1 Assignment of Certain Contracts. Subject to the terms and conditions of this Agreement, Aurora hereby assigns and transfers to the County, all of its right, title and interest in and to, and the County hereby takes assignment of, each contract of Aurora listed on Schedule A attached hereto and incorporated by reference herein (the **"Assigned Contracts"**).

2.2 Assumed Liabilities. Upon the consummation of the transaction contemplated herein and in the PSA (the **"Closing"**), the County shall assume, and agree to pay, perform, fulfill and discharge, the liabilities and obligations of Aurora under the Assigned Contracts, to the extent arising out of, or resulting from, facts, events and circumstances occurring, or which accrue on or after the Closing Date (as defined in the PSA) (other than due to any failure to comply with or breach of any obligations of Aurora whether before or after the Closing Date under such Assigned Contracts, and other than to the extent such obligations would be a violation of Law). The obligations of the County under this Section shall be referred to collectively as the **"Assumed Liabilities"**.

2.3 Excluded Liabilities. The Assumed Liabilities shall not include any liabilities or obligations of Aurora or any of its Affiliates which are not described in Section 2.2 (the **"Excluded Liabilities"**). Except for the Assumed Liabilities and the County's obligations under

the PSA on this Agreement, neither the County nor any of its Affiliates shall assume or otherwise be liable in respect of any debt, claim, obligation or other liability of Aurora or any of its Affiliates whatsoever, including any payable, debt, tort, violation of Law, or breach of any Contract.

### **ARTICLE III REPRESENTATIONS AND WARRANTIES OF AURORA**

Aurora represents and warrants to the County, as of the date hereof as follows:

3.1 Due Authorization. Aurora has full power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The execution, delivery and performance by Aurora of this Agreement has been duly and validly approved by all necessary corporate or other action. Aurora has duly and validly executed and delivered this Agreement. This Agreement constitutes the legal, valid and binding obligation of Aurora enforceable in accordance with its terms, except as such enforceability may be limited by (a) applicable bankruptcy, insolvency, moratorium, reorganization or similar laws in effect which affect the enforcement of creditors' rights generally, or (b) by equitable limitations on the availability of specific remedies.

3.2 Consents and Approvals. Except as otherwise set forth in the PSA, no consent, authorization or approval of, filing or registration with, or cooperation from, any Governmental Authority or any other Person not a party to this Agreement is necessary in connection with the execution, delivery and performance by Aurora of this Agreement and the consummation by Aurora of the transactions contemplated hereby. The execution, delivery and performance by Aurora of this Agreement does not and will not violate or conflict with, result in a breach or termination of, constitute a default under, or permit cancellation of any Assigned Contract.

### **ARTICLE IV REPRESENTATIONS AND WARRANTIES OF THE COUNTY**

The County represents and warrants to Aurora, as of the date hereof, as follows:

4.1 Due Authorization. The County has full power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The execution, delivery and performance by the County of this Agreement have been duly and validly approved by all necessary corporate or other action. The County has duly and validly executed and delivered this Agreement. This Agreement constitutes the legal, valid and binding obligation of the County, enforceable in accordance with its terms, except as such enforceability may be limited by (a) applicable bankruptcy, insolvency, moratorium, reorganization or similar laws in effect which affect the enforcement of creditors' rights generally or (b) by equitable limitations on the availability of specific remedies.

4.2 Consents and Approvals. Except as otherwise set forth in the PSA, no consent, authorization or approval of, filing or registration with, or cooperation from, any Governmental Authority or any other Person not a party to this Agreement is necessary in connection with the

execution, delivery and performance by the County of this Agreement and the consummation by the County of the transactions contemplated hereby or thereby. The execution, delivery and performance by the County of this Agreement does not and will not violate or conflict with, result in a breach or termination of, constitute a default under, or permit cancellation of any material contract to which the County is a party or to which any of its assets is subject.

## **ARTICLE V MISCELLANEOUS**

5.1 Amendment. This Agreement may be amended, modified or supplemented only by written agreement of the parties.

5.2 Counterparts. This Agreement may be executed in counterparts, and such counterparts may be delivered via facsimile transmission or via email with scan or email attachment, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

5.3 Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of Maryland without giving effect to the principles of conflicts of law thereof.

5.4 Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

5.5 No Third Party Beneficiaries. This Agreement is solely for the benefit of the parties hereto and no provision of this Agreement shall be deemed to confer rights upon any other Person.

5.6 Further Assurances. Upon the request of the County, the County will, on and after the date hereof, execute and deliver to the County such other documents, further releases, assignments and other instruments as may be required or deemed appropriate by the County and the County to effect or evidence transfer and assignment to the County of all or any of the Purchased Assets, and to otherwise carry out the purposes of this Agreement. At the request of the County, the County will, on or after the date hereof, execute and deliver such other documents, further releases, assignments and other instruments as may be required or deemed appropriate by the County in order effectively to assume from the County all of the Assumed Liabilities, to confirm the County's right, title and interest in and to the Excluded Assets and to otherwise carry out the purposes of this Agreement. To the extent requested in writing, the County shall, at the County's cost and expense, provide the County with copies of records relating to the Purchased Assets related to the period prior to the date hereof.

5.7 Severability. If any provision of this Agreement shall be held invalid, illegal or unenforceable, the validity, legality or enforceability of the other provisions hereof shall not be affected thereby, and there shall be deemed substituted for the provision at issue a valid, legal and enforceable provision as similar as possible to the provision at issue.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

ATTEST:

FREDERICK COUNTY, MARYLAND

\_\_\_\_\_

By:

\_\_\_\_\_  
Jan H. Gardner  
County Executive

AURORA:

WITNESS:

AURORA HOLDINGS VII, LLC

\_\_\_\_\_

By:

\_\_\_\_\_  
Stanley H. Snow  
President

WITNESS:

CITIZENS CARE AND  
REHABILITATION CENTER OF  
FREDERICK, LLC

\_\_\_\_\_

By:

\_\_\_\_\_  
Stanley H. Snow  
President

WITNESS:

ODYSSEY ASSISTED LIVING AT  
MONTEVUE, LLC

\_\_\_\_\_

By:

\_\_\_\_\_  
Stanley H. Snow  
President

SCHEDULE A

Assigned Contracts

**EXHIBIT E**

**FORM OF BILL OF SALE**  
(Aurora Assets)

**THIS BILL OF SALE** is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2016, ("**Bill of Sale**") by **AURORA HOLDINGS VII, LLC**, a Maryland limited liability company ("**Holdings VII**"), **CITIZENS CARE AND REHABILITATION CENTER OF FREDERICK, LLC**, a Maryland limited liability company ("**Citizens**"), and **ODYSSEY ASSISTED LIVING AT MONTEVUE, LLC**, a Maryland limited liability company ("**Odyssey**") (**Holdings VII**, **Citizens**, and **Odyssey** collectively as "**Aurora**") and **FREDERICK COUNTY, MARYLAND**, a body politic and corporate and a political subdivision of the State of Maryland (the "**County**" or "**Purchaser**") (**Aurora** and the **County** being sometimes referred to herein as the "**Parties**") pursuant to that certain Purchase and Sale Agreement between **County** and **Purchaser**, dated May \_\_\_\_, 2016 (the "**PSA**").

For the consideration set forth in the **PSA**, and other valuable consideration paid by the **County** to **Aurora**, receipt of which is hereby acknowledged, the **Parties** hereto, each intending to be legally bound and to bind their respective successors and assigns, hereby covenant and agree as follows:

1. **Aurora** hereby transfers and sets over unto **Purchaser**, and **Purchaser** hereby accepts, all of **Aurora's** rights, title, and interest in and to all **Aurora Assets** as defined in the **PSA**, including without limitation the items set forth on Schedule A attached hereto and incorporated by reference herein.

TO HAVE AND TO HOLD the same unto the **County**, its successors and assigns, from and after the date hereof, subject to the terms, covenants, conditions and provisions herein contained.

2. **Aurora**, for itself, its successors and assigns, hereby represents, warrants and covenants to the **County**, its successors and assigns, that **Aurora** is the lawful owner of all the **Aurora Assets** transferred to the **County** pursuant to Section 1 (except to the extent the **County** has reversionary or other ownership interests therein), that the **Aurora Assets** are free from all pledges, security interests, mortgages, liens and encumbrances, and that **Aurora**, its successors and assigns, shall forever warrant and defend title to the **Aurora Assets** against all claims and demands of all persons whatsoever claiming by, through or under **Aurora**.

This Bill of Sale may be executed in counterparts, both of which shall be deemed to be an original and both of which shall constitute one and the same Bill of Sale.

[Signatures appears on following page]

\* \* \* \*

IN WITNESS WHEREOF, the parties hereto have caused this Bill of Sale to be executed and delivered as of the date first above written.

AURORA:

WITNESS:

AURORA HOLDINGS VII, LLC

By: \_\_\_\_\_  
Stanley H. Snow  
President

WITNESS:

CITIZENS CARE AND REHABILITATION  
CENTER OF FREDERICK, LLC

By: \_\_\_\_\_  
Stanley H. Snow  
President

WITNESS:

ODYSEY ASSISTED LIVING AT  
MONTEVUE, LLC

By: \_\_\_\_\_  
Stanley H. Snow  
President

COUNTY:

ATTEST:

FREDERICK COUNTY, MARYLAND

By: \_\_\_\_\_  
Jan H. Gardner  
County Executive

**EXHIBIT F**

**FORM OF MANAGEMENT AGREEMENT**

## **MANAGEMENT AGREEMENT**

**THIS MANAGEMENT AGREEMENT** (this "Agreement") is made as of the \_\_\_\_ day of May, 2016, between **FREDERICK COUNTY, MARYLAND** ("County"), and **AURORA HEALTH MANAGEMENT, LLC**, a Maryland limited liability company ("Manager"), and joined solely with regard to Sections 3(c), 3(f), 7, and 12 below, by **CITIZENS CARE AND REHABILITATION CENTER OF FREDERICK, LLC**, a Maryland limited liability company ("Citizens of Frederick"), and **ODYSSEY ASSISTED LIVING AT MONTEVUE, LLC**, a Maryland limited liability company ("Odyssey") (Citizens of Frederick and Odyssey are collectively "Manager Affiliates").

### **INTRODUCTION**

A. County is the owner and operator of a licensed comprehensive care facility located at 1920 Rosemont Avenue, Frederick, Maryland 21702, containing 170 licensed nursing home beds and known as "Citizens Care & Rehabilitation Center", and a licensed assisted living facility located at 1910 Rosemont Avenue, Frederick, Maryland 21702, containing 75 units and known as "Montevue Assisted Living Facility" (collectively the "Facility").

B. Manager is an experienced manager of nursing and assisted living facilities.

C. County desires to engage Manager to manage the Facility, for and on account of County, and desires that Manager extend to County the benefits of expert management and other services and Manager is willing to accept such engagement on the terms and conditions set forth in this Agreement.

D. An affiliate of Manager leased and operated the Facility pursuant to a Facility Lease dated May 1, 2014, which shall terminate pursuant to a Settlement Agreement dated May \_\_, 2016 (the "Settlement Agreement"), a Purchase and Sale Agreement dated May \_\_, 2016 (the "PSA"), and an Amended Indemnity Escrow Agreement of even date herewith (the "Escrow Agreement").

E. "Effective Date" is the "Closing Date" as defined in the Purchase and Sale Agreement executed by the Parties on May \_\_, 2016.

**THEREFORE**, the parties agree as follows:

1. Appointment of Manager. County hereby appoints Manager and Manager hereby accepts the appointment on the terms and conditions set forth in this Agreement to manage the Facility in the name of County.

2. Term. The term of performance under this Agreement shall commence on the Closing Date (as defined in the PSA) and continue thereafter for eighteen (18) months after such Closing Date, unless terminated otherwise pursuant to Sections 4 or 10 of this Agreement (the "Initial Term"). Immediately following completion of the Initial Term, this Agreement shall renew for a twelve (12) month term (the "First Renewal Term"), unless the County provides

Aurora at least ninety (90) days written notice prior to expiration of the Initial Term. Immediately following completion of the First Renewal Term, this Agreement shall renew for another twelve (12) month term (the "Second Renewal Term"), unless either Party provides the other Party at least one hundred twenty (120) days written notice prior to expiration of the First Renewal Term. (The Initial Term together with the First Renewal Term and Second Renewal Term, as applicable, shall be referred to herein as the "Term.")

3. Manager's Duties. During the Term of this Agreement, Manager shall provide County with all necessary and appropriate services for the management of the Facility so that the Facility will be operated and maintained in a manner consistent with industry standards. Wherever in this Agreement Manager is required to obtain the consent or approval of County, such consent or approval may be given by either County Executive Jan H. Gardner or the Chief Administrative Officer as the authorized representative of County. In furtherance of, and without limiting the foregoing general responsibility, Manager shall provide the Facility with the services set forth in Exhibit A, attached hereto, and those services set forth below, all for the compensation set forth in Section 6 herein below; any additional services provided by Manager shall be provided only with County's prior written permission and at County's agreement as to cost.

a. Contracts, Leases and Agreements. Manager shall enter into all contracts, leases and agreements required in the ordinary course of business for the operation, maintenance and service of the Facility in the name of County. When beneficial and appropriate (e.g. capital expenditures), County will make its Procurement Division resources available to Manager.

b. HIPAA; Business Associate. If Manager, in connection with its provision of services to County under this Agreement, constitutes a Business Associate (as defined in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and its implementing privacy regulations at 45 C.F.R. Parts 160-164 (the "HIPAA Privacy Rule")) and will use Protected Health Information (as defined in HIPAA and the HIPAA Privacy Rule) that has been generated by or entrusted to County, Manager shall execute that Business Associate Addendum set forth as Exhibit B, attached hereto, whose terms shall apply with respect to Manager's provision of the services to County under this Agreement. Manager shall appoint a privacy officer and security officer, implement HIPAA privacy and security policies and procedures, hire a contractor to train the workforce on such policies and procedures, to conduct a security risk analysis, and to implement a security management plan. The cost of such contractor shall be borne solely by the County.

c. Personnel and Staff Development. Manager or Manager Affiliates will employ and provide to the Facility a full time, on-site, qualified Administrator, and Business Office Manager. Manager shall also recruit, hire, employ, train, supervise and direct the work of all other personnel necessary for the operation of the Facility who are assigned to work on-site at the Facility (who, together with the Administrator and Business Office Manager, shall be referred to herein as the "Facility Personnel"). All Facility Personnel shall be employees of Manager Affiliates and on Manager Affiliates' payroll, and County shall be responsible for all costs and expenses in connection therewith. The County may also assign a County financial officer to work at the Facility, and the County shall bear the cost thereof. Manager will schedule

and hold regular meetings and/or conduct training programs for department directors and other supervisory personnel and will assist the department directors and other supervisory personnel in (i) the planning, conducting and scheduling of in-service training classes, on-the-job training and orientation programs, and (ii) ensuring that the appropriate Facility Personnel attend and participate in such training programs. Manager and Manager Affiliates will not engage in any conduct or practice which violates any applicable law, order or regulation prohibiting discrimination against any person by reason of his or her race, color, religion, national origin, physical handicap, sex, sexual orientation or age in the performance of this Agreement. All decisions relating to Facility Personnel, including hiring, terminations and compensation, shall be entirely in the control and discretion of the Manager. Compensation of Facility Personnel shall be reasonably consistent with Operating Budget.

d. Supplies. Manager shall purchase, at the expense of County and reasonably consistent with the Operating Budget, such inventories, provisions, food, supplies and other expendable items as are necessary to operate and maintain the Facility in a proper manner.

e. Health Care Reporting. Manager shall comply with applicable law in making reports to the Department of Health and Mental Hygiene of the State of Maryland ("DH"). If Manager reasonably determines a matter should be reported to DH, Manager will notify County as soon as practicable; provided, however, in the event of an incident that Manager reasonably believes must be reported to DH immediately, Manager shall report such matter to DH and concurrently provide a report of the same to County. At County's request and expense, Manager shall seek the advice of counsel to the Facility concerning applicable reporting requirements. Notwithstanding any other provision of this Agreement, Manager shall promptly provide County with a copy of any governmental inspection report, communication, or correspondence of any kind pertaining to the compliance of the Facility with applicable law, including, without limitation, inspection reports, statements of deficiency, plans of correction and related cover letters. Manager shall, at County's request and sole cost and expense, pursue appeals, requests for informal dispute resolution or other proceedings or discussions with government agencies, or compromise or settle such matters in the manner determined by County.

f. Cooperation on Termination. On the expiration or earlier termination of this Agreement, Manager and Manager Affiliates shall extend its reasonable cooperation to County in effecting an orderly transition to any new Manager of the Facility in order to avoid any interruption in the rendering of services to the residents of the Facility. In connection therewith, Manager shall surrender, without charge, to County, all property, equipment, and supplies owned by the County and all contracts, documents, books, records, forms and reports owned by the County and in the possession of Manager regarding the operation of the Facility since the Effective Date. Any property that is owned or leased by Manager, or is otherwise proprietary in nature to Manager no matter what form, and which is provided at the Facility by Manager to facilitate the terms of this Agreement, shall remain the exclusive property of Manager on termination of this Agreement. County may not use such property without obtaining prior written consent of Manager, which consent shall not be unreasonably withheld. As of the date of termination of this Agreement, the Manager or Manager Affiliates shall terminate the employment of all Facility Personnel, other than the Administrator and the Business Office Manager (who shall be relocated from the Facility by Manager to other duties) and the County's

subsequent manager (the "Subsequent Manager") shall extend offers of employment to the terminated employees (the "Transferred Employees"). County acknowledges that one purpose of this Section is to ensure that Manager and Manager Affiliates are not required to give notice to the Facility Personnel of the "closure" of the Facility under the Worker Adjustment and Retraining Notification Act of 1988, as amended (the "WARN Act") or under any comparable state law applicable to such employees. Accordingly, County shall indemnify, defend and hold harmless Manager and Manager Affiliates for, from and against any liability which Manager or Manager Affiliates may incur under the WARN Act or under any applicable comparable state law in the event of a violation by County of its obligations thereunder, including a violation that results from allegations that County constructively terminated Facility Personnel as a result of the terms and conditions of employment offered by Subsequent Manager. Further, County shall be solely liable for its own acts and omissions in connection with this transfer of operations and shall indemnify, defend and hold harmless, Manager and Manager Affiliates for, from and against any liability for such acts or omissions, including, but not limited to Subsequent Manager's failure to hire an employee or former employee as contemplated in this Agreement or termination of employment of any Facility Personnel.

g. Licenses and Permits. Manager shall apply for and obtain and maintain all licenses, certifications and permits required of Manager in connection with its management of the Facility, provided that the County is and shall be the holder of the Facility operating licenses and permits, including, without limitation, all certificates of need and "bed rights," and County shall be the "Provider" within the meaning of all agreements with third-party payors concerning reimbursement for nursing home care and related products and services and shall receive all reimbursement and other payments for patient care directly. Manager shall not be responsible for applying for or obtaining any licenses, certifications or permits required of County as Provider.

h. Laws. Manager shall comply with all laws, orders, rules, regulations or requirements of any federal state, county or municipal authority applicable to the performance of Manager's obligations under the terms of this Agreement. If Manager becomes aware of any violation of any law, order, rule regulation or requirement of any federal, state, county or municipal authority applicable to the Facility (collectively, the "Government Regulations"), then Manager shall immediately notify County and cause the violation to be remedied in a manner required by County; provided, however, compliance with all such Government Regulations shall be and remain at the cost and expense of County, and nothing herein contained shall impose on Manager any liability for the failure of the Facility to comply with any such Government Regulations unless the violation is caused by the gross negligence or willful misconduct of Manager, in which event Manager will be responsible for such costs and expenses caused by its gross negligence or willful misconduct. Manager shall not, without the prior written consent of County, make any alterations or repairs ordered or required by any such federal, state, county or municipal authority or under any such Government Regulations, but if any such alterations or repairs are not made due to the failure of County to promptly give its written consent after written request therefore delivered to County, then County shall hold Manager harmless from any liability that may arise by reason of the failure to make such alterations or repairs, and Manager shall have the right to terminate this Agreement, but only after giving the County written notice of the deficiency and a cure period of thirty (30) days to complete the required

alterations or repairs. Notwithstanding the foregoing, the County shall have the right to request a cure period in excess of thirty (30) days in the event that the required alterations or repairs cannot reasonably be completed within thirty (30) days and the County has taken the necessary steps to begin such alterations or repairs, which request shall not be unreasonably refused by Aurora. County shall have the right at County's expense to contest by proper legal proceedings the validity or application of any such Government Regulations.

i. Administrative Functions. All decisions regarding admissions to the Facility shall be made in the Manager's good faith discretion, consistent with applicable laws, rules and regulations, and Manager shall not be required to admit any proposed resident whom the Manager determines, in its sole discretion, are not medically appropriate for the Facility.

j. Accounts Payable. Manager shall promptly pay all invoices and statements for expenses incurred in the operation of the Facility using funds from the Working Capital Account (as that term is defined in Section 6(e) herein), and the County shall be responsible for the timely reimbursement of the Working Capital Account for such expense payments made from it. Five (5) days prior to the date payments are to be made, Manager will provide County with the details of the expense payments to be made via accounts payable checks, ACH or other payment form. County will wire funds in the amounts of the expense payments so made by Manager, no later than two (2) business days after the expense payment date, time being of the essence. To assure the availability of funds to meet payroll and accounts payable expenses, County will fund the Working Capital Account as described in Section 6(e).

k. Billing and Collection. Manager shall provide billing and collection services for those clinical and related services rendered by Manager and Facility Personnel to residents of the Facility. Manager shall use County's name and County's provider number(s) on all bills submitted to payors. Manager shall complete all records and forms for billing in a timely and accurate manner. Manager shall collect all payments attributable to services rendered to residents at the Facility by Manager and Facility Personnel on behalf of County, and arrange for the deposit of such payments to an account in County's name. Manager agrees that all fees, including capitated or other managed care payments, when accrued or paid, are the sole property of County and that Manager has no direct interest in any such fees.

l. Financial Statements to County. Manager shall render statements to County as follows:

i. On or before the twenty-eighth (28th) day of each calendar month, Manager shall provide a detailed profit and loss statement, balance sheet, and cash flow statement pertaining to the operations of the Facility for the preceding calendar month and for the portion of the operating year ended on the last day of such preceding calendar month (each a "Monthly Statement"). County shall cooperate in providing any required financial information required by Manager to provide such statements, which may include the amounts received by County from third party payors and otherwise from Facility operations.

ii. Manager shall render within ninety (90) days after the end of each fiscal year, a detailed profit and loss statement, balance sheet, and cash flow statement pertaining to

the operations of the Facility for such operating year and a detailed statement for such operating year of all capital expenditures made by Manager for the account of County.

m. Quality Assurance and Improvement. Manager shall develop and maintain quality assurance and improvement policies, procedures, and protocols for the provision of high-quality services to residents of the Facility.

n. Operating Budget.

i. At least thirty (30) days prior to the Effective Date, Manager shall prepare and deliver to the County for its approval a proposed operating budget for the balance of Fiscal Year ("FY") 2016, which will set forth in reasonable detail the cost of all goods, services, and capital items anticipated to be incurred in connection with the operation of the Facility and the Manager's provision of the services set forth herein ("Operating Budget"). The County shall review, incorporate any adjustments to the proposed Operating Budget that it deems appropriate in its sole discretion, and approve the Manager's initial proposed Operating Budget in accordance with its budget approval rules, regulations, and processes. The County shall deliver the final, approved Operating Budget on or before the Effective Date.

ii. On or before April 15, 2016, Manager shall prepare and deliver to the County for its approval a proposed Operating Budget for FY 2017. The County shall review, incorporate any adjustments to the proposed Operating Budget that it deems appropriate in its sole discretion, and approve the Manager's initial proposed Operating Budget in accordance with its budget approval rules, regulations, and processes. The County shall deliver the final, approved Operating Budget prior to the start of FY 2017.

iii. On or before February 1, 2017, Manager shall prepare and deliver to the County for its approval a proposed Operating Budget for FY 2018. The County shall review, incorporate any adjustments to the proposed Operating Budget that it deems appropriate in its sole discretion, and approve the Manager's second proposed Operating Budget in accordance with its budget approval rules, regulations, and processes. The County shall deliver the final, approved Operating Budget prior to the start of FY 2018.

iv. In the event that the Parties cannot agree on an Operating Budget in advance of the start of the Effective Date, the Operating Budget in effect prior to the commencement of this Agreement shall apply until a New Operating Budget is mutually agreed upon by the Parties. In the event that the Parties cannot agree on an Operating Budget in advance of the start of any Fiscal Year, the Operating Budget in effect for the prior Fiscal Year (adjusted for inflation or deflation, as determined by the applicable Consumer Price Index published by the Bureau of Labor Statistics of the U.S. Department of Labor) shall apply until a new Operating Budget is mutually agreed upon by the Parties.

v. Manager understands that the County's oversight of the operating expenses incurred during the Term of this Agreement shall be subject to the County's budget oversight rules, regulations and processes.

o. Other Duties. Manager shall perform such other management and/or administrative duties as may be reasonably requested from time to time by County on mutually acceptable terms.

4. Reformation of Agreement. Manager and County intend and in good faith believe that this Agreement complies with all applicable federal and state laws, regulations and proposed regulations governing third-party payors, including the Medicare and Medicaid programs, and the operation of the Facility. If any provision of this Agreement is contrary to any such laws or regulations, Manager and County will, in good faith, renegotiate such provision to their mutual satisfaction and all other provisions of this Agreement shall remain in full force and effect. If Manager and County are not able to mutually agree on a modification of the provision, then either party may terminate this Agreement on thirty (30) days' written notice to the other without penalty or other cause.

5. County's Duties.

a. Space. County shall arrange to provide to Manager such space suitable for use by Manager in the operation of the Facility.

b. Equipment and Supplies. County shall provide and maintain, in consultation with Manager, all equipment and supplies reasonably necessary to ensure the proper functioning of Manager to perform its duties under this Agreement. All such equipment and supplies shall remain the property of the County.

6. Manager's Compensation.

a. As compensation for the services to be rendered by Manager during the Term of this Agreement, the County will pay to Manager a monthly management fee (the "Manager's Fee"). The Manager's Fee shall be equal to four and one half percent (4.5%) of the Gross Revenue (as defined below) during the Initial Term and the First Renewal Term, and five percent (5%) of the Gross Revenue during the Second Renewal Term. The Manager's Fee shall be paid monthly on an estimated basis and shall be adjusted to comply with the foregoing formula on a year-to-date basis, as actual Gross Revenues are determined for prior periods. The parties shall calculate the estimated Manager's Fee based upon the average Gross Operating Revenues from the statements for the most recent three (3) months preceding the service month, (but not including the month immediately preceding the service month because that month's statement will not have been completed.) The estimated Manager's Fee will be paid by the first (1st) business day of the service month.

b. The parties shall calculate the Manager's Fee actually earned in a specific month within five (5) business days after receipt of the Monthly Statement for that month. The date for each Monthly Statement being the twenty-eighth (28<sup>th</sup>) day of the next calendar month as provided in Section 3(1)(i). The difference between the estimated fee paid to Manager and the actual fee due to Manager shall be promptly determined, and the corresponding adjustment made to the next estimated fee payment.

c. "Gross Revenue" means the revenue accrued from the operation of the Facility, from whatever source, including, without limitation, room and board, ancillary revenue and any other miscellaneous charges resulting from services rendered to residents of the Facility. Notwithstanding any other provision of this Agreement, Gross Revenue shall exclude (1) insurance proceeds (except for rent loss or business interruption proceeds), (2) condemnation awards, and (3) security deposits (unless forfeited).

d. All Facility Personnel will be employees of Manager's affiliates so long as this Agreement is in effect, and all costs for the salaries, benefits, and other expenses of such Facility Personnel ("Employee Expenses") shall be paid by the County, as provided in Section 3(c) above. Manager will provide the County with an estimate of each payroll ten (10) days prior to the end of each pay period, and will withdraw the actual payroll amount from the Working Capital Account (as that term is defined below). County will timely reimburse the Working Capital Account for those Employee Expenses by wire funds no later than two (2) business days after the payroll date, time being of the essence. Manager will provide County with, or make available for review, wage, benefit and earnings statements for verification of the Employee Expenses.

e. In addition, Manager shall be reimbursed for the expenses relating to any of Manager's employees who, with County's prior written consent, are filling any temporary Facility Personnel vacancies at the Facility as provided in Section 3(c) above, and for any consultants who are engaged by Manager to provide services solely to the Facility because of the requirements imposed on the Facility by applicable Government Regulations (such as dietary, pharmaceutical, social and other services) or by programmatic requirements established by County, provided that all such expenses are reasonably consistent with the Operating Budget and not attributable to any other facilities managed or owned by Manager or its affiliates. County shall be charged a rate for such services not to exceed Manager's actual cost for such temporary employees or consultants. Such reimbursements shall be processed pursuant to Section 3(j) above as accounts payable operating expenses of the Facility. On the Effective Date, the County will deposit the sum of \$1,900,000.00 to be held as the Working Capital Account (the "Working Capital Account"), which shall be used by the Manager to meet Employee Expenses and accounts payable expenses, including but not limited to salaries, payroll taxes, and benefit expenses and for all other expenses incurred during the Term in the ordinary course of business for the operation of the Facility, provided that all such expenses are reasonably consistent with the Operating Budget. Following the withdrawal of funds from the Working Capital Account by the Manager, the Manager shall notify the County and the County shall replenish the Working Capital Account within two (2) business days. The availability of the Working Capital Account shall in no way relieve the County of its obligation to fund payroll expenses for which County is responsible in a timely manner as provided above.

## 7. Insurance.

a. Except as provided in Section 7(b) below, Manager and Manager Affiliates shall procure and maintain, at the County's cost and expense, and in a form and content satisfactory to County, during the entire Term of this Agreement including any extension thereof, the policies of insurance as set forth in Exhibit C, attached hereto and incorporated by reference. Such insurance policies shall cover Manager, Manager Affiliates and the Facility Personnel, as applicable, as it relates to the operations of the Facility and the services provided

hereunder. County shall only be responsible for the cost and expense of the insurance policies set forth in Exhibit C to the extent that such policies provide coverage for the Facility or the Facility Personnel, and shall not be responsible for any part of such policies that are attributable to other facilities or operations managed or owned by Manager or its affiliates or other personnel who provide services in support of such other facilities or operations. Manager shall have County added as an additional insured on the general/professional liability and automobile liability policies listed in Exhibit C, and shall provide County with a Certificate of Insurance, endorsement or appropriate insurance binder evidencing such coverage. No work or services under this Agreement shall commence until Manager has provided the County with Certificates of Insurance, endorsements or appropriate insurance binders evidencing the insurance coverage required hereunder and said Certificates of Insurance, endorsements, or binders are approved by the County. In the event any of said policies of insurance are canceled, Manager shall, prior to the cancellation date, submit new evidence of insurance to County. Manager shall provide County with an itemized statement of the cost of the insurance policies required hereunder.

b. County shall procure and maintain, at its sole cost and expense, similar Auto and General Liability coverage for the premises, and shall provide a Certificate of Insurance evidencing such coverage to Manager. With respect to the General Liability coverage, County shall have Manager and Manager Affiliates added as an additional insured on the County's Facility policy, providing Manager with a Certificate of Insurance evidencing such coverage.

#### 8. Indemnification.

a. If permitted by law, County shall indemnify, defend and hold Manager and each of Manager's agents, officers, employees, managers and members harmless from and against any and all claims, losses, costs, damages, liabilities, suits, actions, proceedings, judgments, fines, penalties, charges and expenses, including reasonable attorneys' fees (collectively, "Claims") arising out of the negligence or willful acts or omissions of County or its employees or agents whether before or after the date of this Agreement, except that County shall have no obligation to indemnify Manager to the extent such Claims arise solely out of Manager's negligence or willful acts or omissions. County shall have the right to defend, and shall defend, at its expense and by counsel of its own choosing (subject to the approval of such counsel by Manager or any person or entity to be defended hereunder, not to be unreasonably withheld), against any claim or liability to which the indemnity agreement set forth in this Section 8(a) should apply. Any settlement of any such claim or liability by County shall be subject to the reasonable approval of Manager or any persons or entities being defended hereunder. The right of Manager or any persons or entities being defended hereunder to defend or settle any such claim shall be limited to those cases where County has failed or refused to defend after written notice to County or to where Manager or any persons or entities to be defended hereunder reasonably determine that a conflict of interest exists. County or Manager, as applicable, shall regularly apprise the other of the status of all proceedings. This indemnification shall survive the termination or expiration of this Agreement for a period of two (2) years.

b. Manager shall indemnify, defend and hold County and each of County's partners, officers, directors, stockholders, agents and employees who is not affiliated with

Manager harmless from and against any and all Claims arising out of the negligence or willful acts or omissions of Manager or its agents, employees, managers and members on or after the date of this Agreement, except that Manager shall have no obligation to indemnify County to the extent such Claims arise solely out of County's negligence or willful acts or omissions. Manager shall have the right to defend, and shall defend, at its expense and by counsel of its own choosing (subject to the approval of such counsel by County or any person or entity to be defended hereunder, not to be unreasonably withheld), against any claim or liability to which the indemnity agreement set forth in this Section 8(b) should apply. Any settlement of any such claim or liability by Manager shall be subject to the reasonable approval of County or any persons or entities being defended hereunder. The right of County or any persons or entities being defended hereunder to defend or settle any such claim shall be limited to those cases where Manager has failed or refused to defend after written notice to Manager or to where County or any persons or entities to be defended hereunder reasonably determine that a conflict of interest exists. Manager or County, as applicable, shall regularly apprise the other of the status of all proceedings. This indemnification shall survive the termination or expiration of this Agreement for a period of two (2) years.

c. If any Claim arises under this Section 8, the party seeking indemnification (the "Indemnified Party") shall promptly notify, in writing (a "Notice"), the party from whom indemnification is sought (the "Indemnifying Party"), of any known facts supporting the Claim and the estimated amount arising from the Claim (the "Liability"). The Indemnified Party shall not settle or compromise any Claim without the prior written consent of the Indemnifying Party. In connection with any Claim, the Indemnifying Party may, at its sole cost, assume the defense of any such Claim in any litigation or related proceeding (a "Proceeding"). The Indemnified Party shall be entitled to participate in (but not control) the defense of any Claim or Proceeding related to a Claim, with its own counsel and at its sole cost. If the Indemnifying Party does not assume the defense of a Claim or Proceeding within twenty (20) days after receipt of a Notice: (i) the Indemnified Party may defend the Claim in such manner as it reasonably deems appropriate, including settling such Claim after giving advance written notice of such proposed settlement, and (ii) the Indemnifying Party shall thereafter be entitled to participate (but not control) in the defense of the Claim and any Proceeding, with its own counsel and at its sole expense.

d. Subject to the terms hereof, an Indemnifying Party shall pay to the Indemnified Party the full amount of any and all sums that such Indemnified Party is obligated to pay or assume hereunder, within twenty (20) days after notice thereof or, if such Claim is made the subject of judicial or administrative proceedings, the date such proceedings are terminated or a final judgment is rendered and all appeals are exhausted or applicable appeal periods are allowed to lapse.

9. Liens. County and Manager will use their commercially reasonable efforts to prevent any liens from being filed against the Facility that arise from any maintenance, repairs, alterations, improvements, renewals or replacements in or to the Facility, other than to secure the financing thereof.

10. Termination.

a. Termination by County. The County shall have the right to terminate immediately (or after such notice as the County may provide) this Agreement and the employment of Manager on the happening of any of the following events, and, except as otherwise provided in this Agreement or as to accrued liabilities, including, without limitation, accrued Manager's Fees and expenses entitled to reimbursement payable under Section 6, or claims which shall have accrued or arisen before the effective date of such termination, all obligations under this Agreement shall thereon cease:

i. If in any twelve (12) month rolling period beginning twelve (12) months after the Closing Date Citizen Care & Rehabilitation Center does not achieve a minimum EBITDAR of Two Million Five Hundred Thousand Dollars (\$2,500,000) and the County has given ninety (90) days prior notice of its intention to terminate on this basis; for purposes of this Section 10, EBITDAR shall not include any expenses imposed by the County which are not consistent with the ordinary course of business for a nursing home; including, but not limited to, the expense of the County financial officer listed in Section 3(c) above, and any expenses associated with the Montevue Assisted Living Facility; or

ii. If a governmental agency determines that the Facility fails to be in substantial compliance with any license, permit, or certification relating to the manner in which the Facility is to be operated under state or federal law and regulations including, without limitation, laws and regulations pertaining to the Medicare or Medicaid programs, and the Facility's plan of correction is rejected by the applicable government agency; or

iii. If, at any time after the Effective Date, the Facility is cited for deficiencies at a scope and severity of "level G" (as governed by Part 488 of 42 C.F.R.) in areas representing federally defined substandard quality of care or higher in a survey issued by a governmental agency and Manager fails to correct or cause to be corrected such deficiency after a second revisit in the same one hundred eighty (180) day federal survey cycle; or

iv. If Manager (i) applies for or consents to the appointment of a receiver, trustee or liquidator of Manager or of all or a substantial part of Manager's assets; (ii) files a voluntary petition in bankruptcy or admits in writing its inability to pay its debts as they become due; (iii) makes a general assignment for the benefit of creditors; or (iv) files a petition or an answer seeking reorganization or arrangement with creditors or to take advantage of any insolvency law; or

v. If an order, judgment or decree is entered by a court of competent jurisdiction, on the application of a creditor, adjudicating Manager as bankrupt or insolvent or approving a petition seeking Manager's reorganization or appointing a receiver, trustee or liquidator of it of all or a substantial part of its assets and is not withdrawn or dismissed within ninety (90) days; or

vi. If there occurs any act of fraud by Manager or any member of Manager, or Manager or any member of Manager is convicted of a crime; or

vii. On the closing date of any sale of the Facility by the County (including any sale of the Facility in connection with a foreclosure, power of sale or deed-in-lieu of foreclosure); or

viii. On the effective date of any taking of the entire or a substantial portion of the Facility or its services through law to condemnation proceedings by any governmental authority; or

ix. If County shall elect not to rebuild or repair the Facility after the occurrence of a casualty, and as a result thereof, County shall cease operating the Facility as a nursing home or assisted living facility; or

x. On the giving of written notice by County if Manager has been grossly or continually negligent in, or in material breach of, its performance of any of its obligations under this Agreement, provided that County shall have previously served written notice on Manager setting forth the details of such alleged breach, and Manager shall not, within thirty (30) days after the mailing of such notice, have cured such breach, or if such breach is of a nature that it cannot be cured within such thirty (30) day period have commenced and at all times thereafter have diligently proceeded with all acts required to cure such breach; or

xi. If Manager or any of its owners, members, or directors has been excluded or suspended from any federal health care program (as defined in Section 1128B of the Social Security Act (42 U.S.C. 1320a-7b(h)) or state health care program (as defined in Section 1128B of the Social Security Act (42 U.S.C. 1320a-7b(b))).

b. Termination for Cause by Manager. In addition to its termination right under Section 2 above, Manager shall have the right to terminate this Agreement and its appointment as Manager upon thirty (30) days' prior written notice (other than Section 10(b)(iii) below, which shall terminate upon three (3) days' written notice) on the happening of any of the following events, and, except as otherwise provided herein or as to accrued liabilities, including, without limitation, accrued Manager's Fees payable under Section 6, or claims which shall have accrued or arisen before such termination, all obligations hereunder shall thereon cease:

i. On the occurrence of a material breach by County of any of its obligations hereunder or pursuant to the terms of the Settlement Agreement, the PSA or the related Escrow Agreement, which is not cured within fifteen (15) days after written notice from Manager detailing such alleged breach; or

ii. Upon thirty (30) days' prior written notice if any portion of the escrowed Acquisition Price (as defined in the PSA) held under the Escrow Agreement is not timely released on the dates specified in the related Escrow Agreement; or

iii. Upon three (3) days' prior written notice if any portion of the Employee Expenses are not paid when due in accordance with this Agreement, or the Working Capital Account is not replenished in accordance with Section 6(e) hereof. The County hereby

acknowledges the failure to pay any portion of the Employee Expenses shall cause irreparable harm to Manager, and shall jeopardize the health and welfare of the residents of the Facility; or

iv. If County elects not to rebuild or repair the Facility after the occurrence of a casualty, and as a result thereof, County has ceased operating the Facility as a comprehensive care facility or assisted living facility.

(c) Termination Without Cause. During the First Renewal Term and Second Renewal Term, the County shall have the right to terminate this Agreement for any reason or no reason upon giving one hundred twenty (120) days prior written notice to Manager.

11. Assignment. Neither party hereto shall assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other party.

12. Notices. Any notice, communication or demand required or permitted to be given under this Agreement shall be in writing (including facsimile communications) and shall be sent by first-class mail, return receipt requested, or by nationally recognized overnight courier, or by facsimile transmission or by personal delivery. All notices shall be sent to the applicable party at the following address:

To County, by addressing the same to:

Frederick County, Maryland  
Winchester Hall  
12 E. Church Street  
Frederick, Maryland 21702  
Attention: Office of the County Executive

With a copy to:

County Attorney  
Winchester Hall  
12 E. Church Street  
Frederick, Maryland 21702

To Manager or Manager Affiliates, by addressing the same to:

Aurora Health Management, LLC  
8227 Cloverleaf Drive, Suite 309  
Millersville, Maryland 21108  
Attention: Stanley H. Snow

with a copy to:

Gallagher Evelius & Jones, LLP  
218 North Charles Street, Suite 400  
Baltimore, Maryland 21201  
Fax No.: (410) 468-2786  
Attention: Thomas C. Dame, Esquire

Any such properly given notice shall be effective on the earliest to occur of receipt, telephone confirmation of receipt of facsimile communication, one (1) business day after delivery to a nationally recognized overnight courier or five (5) business days after deposit in the mail, return receipt requested.

13. Access to Records. If required by Section 1861(v)(1)(1) of the Social Security Act, 42 U.S.C. § 1395x(v)(1):

a. For such period as may be required under state and federal law, Manager shall make available, on written request, to the Secretary of Health and Human Services, the United States Comptroller General or any of their duly authorized representatives, a copy of this Agreement, and any books, documents and records of Manager that are necessary to certify the nature and extent of costs incurred by County under this Agreement. This provision shall survive expiration or termination of this Agreement.

b. If Manager carries out any of the duties of this Agreement through a subcontract, such subcontract must be approved in advance by County and must contain a clause to the effect that until the expiration of four (4) years after the furnishing of services under such subcontract, the subcontractor shall make available, on written request, to the Secretary of Health and Human Services, the United States Comptroller General, or any of their duly authorized representatives, a copy of the subcontract and all books, documents and records of the related organization that are necessary to verify the nature and extent of costs incurred by Manager and County under the subcontract.

c. If any party is requested to disclose books, documents or records pursuant to this Agreement for purposes of an audit which may include costs of services provided under this Agreement, it shall notify the other party of the nature and scope of such request. The requirements of this Section 13 are effective as of the Effective Date and pertain to all records which have or should have been maintained with respect to the Facility and/or this Agreement on or after that date.

14. Representations. Each party represents and warrants to the other that (i) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms subject to bankruptcy, insolvency, reorganization, fraudulent transfer and similar laws affecting creditors' rights generally; (ii) it has all, if any, requisite licenses, certifications, accreditations and permits to enter into this Agreement and to perform its obligations hereunder; (iii) neither it nor any individual with a direct or indirect ownership interest of five percent (5%) or more in such party nor any of its officers, directors, employees or agents who will be

providing services hereunder nor any of their immediate family or household members is now or has been debarred, excluded or suspended from any Federal health care program (as defined in Section 1128B of the Social Security Act (42 U.S.C. 1320a-7b(f)) or state health care program (as defined in Section 1128B of the Social Security Act (42 U.S.C. 1320a-7b(h))); and (iv) it will not make any payment hereunder to any such person who has been so debarred, excluded or suspended. Each person signing this Agreement on behalf of a party represents and warrants that he has authority to execute this Agreement on behalf of that party.

15. Miscellaneous.

a. Relationship of the Parties. County and Manager shall be independent contractors with respect to one another under the terms of this Agreement. Nothing set forth in this Agreement shall constitute or be construed to be or create a partnership or joint venture between County, its successors or assignees, on the one part, and Manager, its successors or assignees, on the other part.

b. Modification and Changes. The parties may amend this Agreement only by an amendment in writing signed by all parties hereto.

c. Entire Agreement. This Agreement, together with any exhibits or addenda hereto, constitute all of the understandings and agreements of whatsoever nature or kind existing between the parties with respect to Manager's management of the Facility.

d. Headings. Section headings contained in this Agreement are for convenience of reference only and are not intended to define, limit or describe the scope or intent of any provision of this Agreement.

e. Approval or Consent. Whenever under any provision of this Agreement the approval or consent of either party is required, such approval and consent shall be timely given or denied and shall not be unreasonably withheld.

f. Governing Law. This Agreement shall be deemed to have been made and shall be construed and interpreted in accordance with the laws of the State of Maryland, exclusive of the conflict of laws provisions of such State.

g. Partial Invalidity. The provisions of this Agreement are severable, such that if any provisions of this Agreement or the application of any provision to any person or circumstance is held invalid or unenforceable, the remainder hereof shall be construed so as to give effect to the intent of the parties, and the application of such provision to other persons or circumstances shall remain valid and enforceable.

h. Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties and their respective personal representatives, successors and permitted assigns.

i. Waiver of Provisions. The failure of either party to insist on a strict performance of any of the terms or provisions of this Agreement or to exercise any option, right, or remedy set forth in this Agreement, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right or remedy. No waiver by either party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by such party.

j. Third Parties. Except as expressly stated herein none of the obligations of either party shall run to, or be enforceable by, any party other than the other party to this Agreement.

k. Estoppel Certificates. At the request of either party, the parties will execute an appropriate estoppel certificate confirming that this Agreement is in full force and effect, specifying any items in default and providing such other terms or information as reasonably requested by such party.

l. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or other electronic transmission shall be as effective as delivery of a manually executed counterpart of this Agreement.

m. Further Instruments. The parties shall execute and deliver all other appropriate supplemental agreements and other instruments, and take any other action necessary to make this Agreement fully and legally effective, binding, and enforceable, as between the parties, and as against third parties.

n. Survival. The provisions of Sections 3(f), 6, 8, 13 and 15(p), and Exhibit B of this Agreement shall survive the termination or expiration of this Agreement for any reason.

o. Dispute Resolution. In the event that any dispute arises relating to this Agreement, such dispute will be handled in accordance with the process set forth in Section 7.3 of the PSA.

p. Appropriation of Funds. If necessary to implement and maintain this Agreement, the County Executive of the County agrees, to the extent permitted by applicable law, to do all things lawfully within her powers to annually request the appropriation of funds by the Frederick County Council to pay all amounts properly due and payable under this Agreement. This obligation includes (without limitation) requesting adequate funds be included in the budget submitted to the Frederick County Council to meet the County's obligations hereunder in full in each of its fiscal year budgets. Nothing in this Agreement shall obligate the Frederick County Council to make any appropriation.

[Signatures Appear on the Following Page]

{Signature Page to Management Agreement}

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on this \_\_\_\_\_ day of May, 2016.

**COUNTY:**

**FREDERICK COUNTY, MARYLAND**

By: \_\_\_\_\_  
Jan H. Gardner, County Executive

**MANAGER:**

**AURORA HEALTH MANAGEMENT, LLC**

By: \_\_\_\_\_  
Stanley H. Snow  
President

**MANAGER AFFILIATES:**

**CITIZENS CARE AND REHABILITATION  
CENTER OF FREDERICK, LLC**

By: \_\_\_\_\_  
Stanley H. Snow  
President

**ODYSSEY ASSISTED LIVING AT  
MONTEVUE, LLC**

By: \_\_\_\_\_  
Stanley H. Snow  
President

## **EXHIBIT A**

### **SCOPE OF SERVICES**

Manager shall assume operational management and full administrative responsibility of the Facility. It is understood that the following responsibilities shall apply, in addition to those specified in Section 3 of the Agreement:

1. Manager shall assign and manage Facility Personnel to maintain 24 hours per day, 7 days per week, and 365 days per year operations.
2. Manager shall provide a qualified full time on-site Facility Administrator, and Business Office Manager, each of whom shall be Manager's employees.
3. Manager shall provide corporate and regional support for Facility Personnel.
4. Manager shall meet with the County or its designee when and as needed, upon reasonable advance notice.
5. Manager will manage the Facility operations, in keeping with contracts currently in place, and those which become effective during the Term hereof.
6. Manager shall follow all applicable Government Regulations in reporting all reportable resident incidents to the appropriate governmental authorities. The Manager shall also inform County or its designee of all such incidents.
7. Manager will maintain a set of books and records showing all revenue collected and all expenditures made in connection with the operation of the Facility along with such supporting data and documents as necessary. Said books and records shall be kept in such a manner as to make them easily reconcilable with the reports and forms to be submitted to the County by Manager. The County and its authorized representative(s) shall have the right at any time to examine the records, books, data and documents kept by the Manager regarding the operation and maintenance of the facility. A copy of said books and records shall become the permanent property of the County and be retained by the County.
8. Manager shall submit all required reports, forms and documents to the County within established time frames; Manager shall promptly investigate any complaint received by the County concerning the operation of the Facility or the conduct, demeanor or appearance of any employee, invitee or sub-Manager of Manager. Manager shall respond in writing to any such complaint within five (5) business days.
9. Manager shall submit monthly financial summaries detailing the prior month's actual revenues and expenses and such other financial documents set forth in Section 3 of this Agreement. The Manager shall meet with the County or designee to review each report. The Manager shall have regular meetings with the Finance Division and/or Accounting Department to discuss financial issues, performance, and revenue and expense trends. These meeting shall be held at a frequency determined at the sole discretion of the County, but no more than once per month. Such meetings shall take place at the Facility.
10. Manager shall hire Schiavi Wallace or another qualified independent contractor acceptable to County to prepare the annual CMS Medicaid and Medicare Cost Reports, within the required CMS time frames. County shall pay for the cost of hiring this contractor. The County reserves the right to view the reports at any time during the contract term or any renewals thereof.

11. Manager shall allow inspections of the Facility to be periodically conducted by the State, County, its designees, and/or consultants hired by the County. Manager shall not be responsible for the costs of any such inspection. A copy of any recommendations resulting from an inspection shall be provided to the Manager. Manager shall consult with County regarding any recommendations set forth in each inspection report.

12. Manager shall be responsible for developing regular communications with residents through Resident Council Meetings and with family members through scheduled family meetings, newsletters etc. The County reserves the right to attend meetings and/or review the newsletters at any time throughout the contract term or any renewals thereof.

13. Manager shall observe and comply with any and all requirements of all applicable federal, state or local statutes, ordinances, regulations and standard rules.

14. Manager shall acquire and keep current all licenses required for the conduct of its business (other than the Facility operating licenses, which are the responsibility of the County to obtain and maintain). Copies shall be provided to the County, and all updates shall be provided immediately.

15. County reserves the right to request that residents complete satisfaction surveys.

The County shall maintain operational oversight as follows:

1. County shall be responsible for capital projects. Capital projects are defined as repairs, replacements or upgrades which maintain or increase the value of the facilities and which meet or exceed a dollar limit of \$1,000. The County shall have sole authority to determine what repairs, replacements or upgrades are capital projects.

2. Authorized officers, employees, agents, managers, sub-managers and other representatives of the County shall have the right (at such times as may be reasonable under the circumstances and with as little interruption of Manager's operations as is reasonably practical) to access to the Facility for the purposes of inspection, maintenance or repair.

Management of Employees:

1. Manager shall be responsible for hiring, employment and management of all current and future Facility Personnel at the Facility, during the Term.

2. Manager shall be responsible for evaluations of employees and disciplinary action.

3. In order to meet the ever changing demands on the Facility from both internal and external forces, the Manager may assign staff duties and responsibilities as necessary in accordance with the Manager's expert assessment of the requirements of the Facility.

## **EXHIBIT B**

### **BUSINESS ASSOCIATE ADDENDUM**

A. County desires to commence a business relationship with Manager and Manager Affiliates (Manager and Manager Affiliates are collectively "Manager" herein) that shall be memorialized in the preceding agreement (the "Underlying Agreement") pursuant to which Manager may be considered a "Business Associate" of County as defined in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") including all pertinent regulations (45 CFR Parts 160 and 164) issued by the U.S. Department of Health and Human Services as either having been amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), as Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

B. The nature of the prospective contractual relationship between County and Manager may involve Manager's creation or receipt of Protected Health Information ("PHI"), as that term is defined below, from or on behalf of County.

C. For good and lawful consideration as set forth in the Underlying Agreement, County and Manager enter into this Business Associate Addendum (this "Addendum") for the purpose of ensuring compliance with the requirements of HIPAA, its implementing regulations, the HITECH Act and the Maryland Confidentiality of Medical Records Act (Md. Ann. Code, Health-General Art., Section 4-301 et seq.) ("MCMRA").

NOW THEREFORE, the premises having been considered and with acknowledgment of the mutual promises and of other good and valuable consideration herein contained, the parties, intending to be legally bound, hereby agree as follows:

#### **DEFINITIONS**

A. "Individual" shall have the same meaning as the term "individual" in 45 CFR §164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

B. "Breach" shall have the same meaning as the term "breach" in §13400 of the HITECH Act and shall include the unauthorized acquisition, access, use or disclosure of PHI that compromises the security or privacy of such information.

C. "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 CFR §164.501

D. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E, as amended by the HITECH Act and as may otherwise be amended from time to time.

E. "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 CFR §160.103, limited to the information created or received by Manager from or on behalf of County.

F. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR §164.103.

G. "Secretary" shall mean the Secretary of the U.S. Department of Health and Human Services or his designee.

H. "Unsecured Protected Health Information" or "Unsecured PHI" shall mean PHI that is not secured through the use of a technology or methodology specified by the Secretary in guidance or as otherwise defined in the §13402(h) of the HITECH Act.

#### USE OR DISCLOSURE OF PHI BY MANAGER

A. Except as otherwise limited in this Addendum, Manager may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, County as specified in the Underlying Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

B. Manager shall only use and disclose PHI if such use or disclosure complies with each applicable requirement of 45 CFR §164.504(e).

C. Manager shall be directly responsible for full compliance with the relevant requirements of the Privacy Rule to the same extent as County.

#### DUTIES OF MANAGER RELATIVE TO PHI

A. Manager shall not use or disclose PHI other than as permitted or required by this Addendum or as Required By Law.

B. Manager shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of County.

C. Manager shall immediately notify County of any use or disclosure of PHI in violation of this Addendum or of any Security Incident (as such term is defined in 45 C.F.R. § 164.304).

D. Manager shall promptly notify County of a Breach of Unsecured PHI following the first day on which Manager (or Manager's employee, officer or agent) knows of such Breach or after the first day on which Manager (or Manager's employee, officer or agent) should have known of such Breach. Manager's notification to County hereunder shall:

1. Be made to County no later than five (5) calendar days after discovery of the Breach, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security;

2. Include the individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach; and

3. Be in substantially the same form as Schedule A hereto.

E. In the event of an unauthorized use or disclosure of PHI, a Security Incident or a Breach of Unsecured PHI, Manager shall mitigate, to the extent practicable, any harmful effects of said disclosure that are known to it.

F. Manager agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Manager on behalf of County, agrees in writing to the same restrictions and conditions that apply through this Addendum to Manager with respect to such information.

G. To the extent applicable, Manager shall provide access to Protected Health Information in a Designated Record Set at reasonable times, at the request of County or, as directed by County, to an Individual in order to meet the requirements under 45 CFR §164.524. Notwithstanding the foregoing, Manager shall provide an Individual with access to his/her PHI in a time and manner that meets the requirements of applicable federal and state laws pertaining to nursing home or assisting living facility residents' access to medical records.

H. To the extent applicable, Manager shall make any amendment(s) to Protected Health Information in a Designated Record Set that County directs or agrees to pursuant to 45 CFR §164.526 at the request of County or an Individual.

I. Manager shall, on request with reasonable notice, provide County access to its premises for a review and demonstration of its internal practices and procedures for safeguarding PHI.

J. Manager agrees to document such disclosures of PHI and information related to such disclosures as would be required for County to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528. Should an Individual make a request to County for an accounting of disclosures of his or her PHI pursuant to 45 C.F.R. §164.528, Manager agrees to promptly provide County with information in a format and manner sufficient to respond to the Individual's request.

K. Manager shall, on request with reasonable notice, provide County with an accounting of uses and disclosures of PHI provided to it by County.

L. Manager shall make its internal practices, books, records, and any other material requested by the Secretary relating to the use, disclosure, and safeguarding of PHI received from or created or received by Manager on behalf of, County available to the Secretary for the purpose of determining compliance with the Privacy Rule. The aforementioned information shall be

made available to the Secretary in the manner and place as designated by the Secretary or the Secretary's duly appointed delegate. Under this Addendum, Manager shall comply and cooperate with any request for documents or other information from the Secretary directed to County that seeks documents or other information held by Manager.

M. Manager may use Protected Health Information to report violations of law to appropriate federal and state authorities, consistent with 42 C.F.R. §164.502(j)(1).

N. Except as otherwise limited in this Addendum, Manager may disclose PHI for the proper management and administration of Manager, provided that disclosures are Required By Law, or Manager obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies Manager of any instances of which it is aware in which the confidentiality of the information has been breached.

#### TERM AND TERMINATION

A. Term. The Term of this Addendum shall be effective as of the date the Underlying Agreement is effective, and shall terminate when all of the Protected Health Information provided by County to Manager, or created or received by Manager on behalf of County, is destroyed or returned to County, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this section.

B. Termination for Cause. On County's knowledge of a material breach by Manager, County shall:

1. Provide an opportunity for Manager to cure the breach or end the violation and, if Manager does not cure the breach or end the violation within the time specified by County, terminate this Addendum; or

2. Immediately terminate this Addendum if Manager has breached a material term of this Addendum and cure is not possible.

C. Effect of Termination.

1. Except as provided in paragraph (C)(2) below, on termination of this Addendum, for any reason, Manager shall return or destroy all Protected Health Information received from County, or created or received by Manager on behalf of County. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Manager. Manager shall not retain any copies of the Protected Health Information.

2. If Manager determines that returning or destroying the Protected Health Information is infeasible, Manager shall provide to County written notification of the conditions that make return or destruction infeasible. After written notification that return or destruction of

Protected Health Information is infeasible, Manager shall extend the protections of this Addendum to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Manager maintains such Protected Health Information.

3. Should Manager make a disclosure of PHI in violation of this Addendum, County shall have the right to immediately terminate any contract, other than this Addendum, then in force between the parties, including the Underlying Agreement.

4. The respective rights and obligations of County and Manager under this paragraph (C) shall survive the termination of this Addendum.

#### CONSIDERATION

Manager recognizes that the promises it has made in this Addendum shall, henceforth, be detrimentally relied on by County in choosing to continue or commence a business relationship with Manager.

#### REMEDIES IN EVENT OF BREACH

Manager hereby recognizes that irreparable harm will result to County, and to the business of County, in the event of breach by Manager of any of the covenants and assurances contained in this Addendum. As such, in the event of breach of any of the covenants and assurances contained in Sections II or III above, County shall be entitled to enjoin and restrain Manager from any continued violation of Sections II or III. Furthermore, in the event of breach of Sections II or III by Manager, County is entitled to reimbursement and indemnification from Manager for County's reasonable attorneys' fees and expenses and costs that were reasonably incurred as a proximate result of Manager's breach. The remedies contained in this Section VI shall be in addition to (and not supersede) any action for damages and/or any other remedy County may have for breach of any part of this Addendum.

#### MODIFICATION

This Addendum may only be modified through a writing signed by the parties to this Addendum and, thus, no oral modification hereof shall be permitted. The parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for County to comply with the requirements of the Privacy Rule and HIPAA.

#### INTERPRETATION OF THIS ADDENDUM IN RELATION TO OTHER CONTRACTS BETWEEN THE PARTIES

Subject to Section 15(o) of the Underlying Agreement, should there be any conflict between the language of this Addendum and any other contract entered into between the parties (either previous or subsequent to the date of this Addendum), the language and provisions of this Addendum shall control and prevail unless the parties specifically refer in a subsequent written agreement to this Addendum by its title and date and specifically state that the provisions of the later written agreement shall control over this Addendum.

**COMPLIANCE WITH STATE LAW**

Manager acknowledges that by accepting the PHI from County, it becomes a holder of medical records information under the MCMRA and is subject to the provisions of that law. If the HIPAA Privacy Rule and the MCMRA conflict regarding the degree of protection provided for Protected Health Information, Manager shall comply with the more restrictive protection requirement.

**IN WITNESS WHEREOF**, the parties hereto have caused this Addendum to be executed as of the date specified above.

**COUNTY:**

**FREDERICK COUNTY, MARYLAND**

By: \_\_\_\_\_

Jan H. Gardner, County Executive

**MANAGER:**

**AURORA HEALTH MANAGEMENT, LLC**

By: \_\_\_\_\_

Stanley H. Snow  
President

**MANAGER AFFILIATES:**

**CITIZENS CARE AND REHABILITATION  
CENTER OF FREDERICK, LLC**

By: \_\_\_\_\_

Stanley H. Snow  
President

**ODYSSEY ASSISTED LIVING AT  
MONTEVUE, LLC**

By: \_\_\_\_\_

Stanley H. Snow  
President

**SCHEDULE A TO BUSINESS ASSOCIATE ADDENDUM**

**FORM OF NOTIFICATION TO COUNTY OF BREACH OF UNSECURED PHI**

Manager hereby notifies County that there has been a Breach of Unsecured (unencrypted) Protected Health Information (PHI) that Manager has used or has had access to under the terms of the Underlying Agreement.

Description of the breach: \_\_\_\_\_  
\_\_\_\_\_

Date of the breach: \_\_\_\_\_

Date of the discovery of the breach: \_\_\_\_\_

Number of Individuals affected by the breach: \_\_\_\_\_

The types of Unsecured PHI that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Description of what Manager is doing to investigate the breach, to mitigate losses, and to protect against any further breaches: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Contact information to ask questions or learn additional information:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Email Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT C**  
**INSURANCE**

1. **General Liability** coverage with minimum limits of:  
\$1,000,000 per Occurrence; \$3,000,000 General Aggregate  
\$3,000,000 Products/Completed Operations Aggregate

Policy must include FREDERICK COUNTY, MARYLAND as an Additional Insured.

2. **Auto Liability** coverage provided by the County's policy for County owned vehicles.

3. **Workers' Compensation** coverage with minimum statutory limits

Employers Liability coverage with minimum limits of \$100,000 per Accident, \$100,000 per Employee; and \$500,000 per Policy

*NOTE: Out of State employers must show evidence of coverage in Maryland by listing Maryland as a covered State. A copy of the Declarations Page showing evidence of coverage in Maryland must be provided.*

4. **Professional Liability** coverage with minimum limits of: \$1,000,000 per Occurrence and \$3,000,000 Aggregate

Professional Liability coverage must indicate if it provides Occurrence or Claims Made coverage. Coverage written on a Claims Made form must indicate retroactive date.

Professional Liability policy must include FREDERICK COUNTY, MARYLAND as an Additional Insured.

Professional Liability policy must have no sexual molestation exclusion.

5. **Crime/Bond** coverage with minimum limits of:  
\$250,000 Employee Theft; \$125,000 Inside Premises; \$1,000,000 Outside Premises.

Must include a statement that provides Third Party coverage without a conviction clause on behalf of FREDERICK COUNTY, MARYLAND.

6. **Employment Practices Liability (EPL)** coverage with minimum limits of:  
\$1,000,000 per Occurrence and \$2,000,000 Aggregate

Policy must include FREDERICK COUNTY, MARYLAND as an Additional Insured.  
EPL coverage must indicate if it provides Occurrence or Claims Made coverage.

Coverage written on a Claims Made form must indicate retroactive date.

**PLEASE NOTE THE FOLLOWING:**

1. The Certificate Holder must be:  
Frederick County, Maryland  
c/o Risk Management  
12 East Church Street  
Frederick, MD 21701
2. Endorsements for policies requiring Additional Insured status must be provided upon request at the discretion of the Risk Management Department. Blanket endorsements are acceptable.
3. If any primary policy's limits fall short of the stated requirements, a certificate shall be provided for all any excess policies that supplement or extend these limits.
4. Any insurance written on a Claims Made form must be identified as such and indicate a retroactive or knowledge date.
5. These coverages must be maintained for the duration of the contract or business relationship.
6. The Manager shall not commence work for Frederick County, Maryland until evidence of all required coverage is approved by the Risk Director.
7. Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.
8. The providing of any insurance required herein does not relieve the Manager of any of the responsibilities or obligations assumed by the Manager in the contract awarded or for which the Manager may be liable by law or otherwise.
9. All of the above coverages must be written by a carrier with a minimum A.M. Best rating of A- or better AND a financial size classification of VI or higher. All insurance policies must also be underwritten by companies licensed to do business in the State of Maryland and all certificates must include an authorized signature.